

Springwell Solar Farm

Explanatory Memorandum

EN010149/APP/3.2
November 2024
Springwell Energyfarm Ltd

APFP Regulation 5(2)(c)
Planning Act 2008
Infrastructure Planning
(Applications: Prescribed Forms
and Procedure) Regulations 2009



Table of Contents

- Table of Contents 1**
- 1. Introduction 3**
 - 1.1. Overview3
 - 1.2. Springwell Energyfarm Limited.....3
 - 1.3. The Site.....3
 - 1.4. The Proposed Development.....4
 - 1.5. Phasing.....7
 - 1.6. Parameters of the Order and the "consent envelope".....7
- 2. The Purpose and Structure of this Document 13**
- 3. Purpose of the Order 16**
 - 3.2. Compulsory Acquisition.....17
 - 3.3. Statutory Undertakers' Land and Apparatus.....18
- 4. Provisions of the Order 20**
 - 4.2. Part 1 (Preliminary) and Part 2 (Principal Powers).....20
 - 4.3. Part 3 (Streets).....28
 - 4.4. Part 4 (Supplemental Powers).....33
 - 4.5. Part 5 (Powers of Acquisition)34
 - 4.6. Part 6 (Miscellaneous and General)40
- 5. Schedules 46**
 - 5.1. Schedule 1 (Authorised Development).....46
 - 5.2. Schedule 2 (Requirements)47
 - 5.3. Schedule 3 (Legislation to be disapplied)52
 - 5.4. Schedule 4 (Streets subject to street works)52
 - 5.5. Schedule 5 (Alteration of streets)52
 - 5.6. Schedule 6 (Streets and public rights of way)52
 - 5.7. Schedule 7 (Access to works).....52
 - 5.8. Schedule 8 (Traffic regulation measures)53
 - 5.9. Schedule 9 (Land in which only new rights etc. may be acquired)53
 - 5.10. Schedule 10 (Modification of compensation and compulsory purchase enactments for the creation of new rights and imposition of new restrictive covenants).....53
 - 5.11. Schedule 11 (Land of which temporary possession may be taken).....53
 - 5.12. Schedule 12 (Hedgerows to be removed).....53
 - 5.13. Schedule 13 (Documents and plans to be certified).....54
 - 5.14. Schedule 14 (Arbitration rules)54

5.15. Schedule 15 (Protective provisions)	54
5.16. Schedule 16 (Procedure for discharge of requirements)	54
6. References	56

1. Introduction

1.1. Overview

- 1.1.1. This Explanatory Memorandum has been prepared on behalf of Springwell Energyfarm Limited (the Applicant) and forms part of the Development Consent Order (DCO) Application.
- 1.1.2. A summary of the description of the Proposed Development can be found in Section 3.1 of the **Environmental Statement (ES) Volume 1, Chapter 3: Proposed Development Description [EN010149/APP/6.1]**. The terminology used in this document is defined in the **ES Volume 1, Chapter 00: Glossary [EN010149/APP/6.1]**.
- 1.1.3. A DCO is required for the Proposed Development as it falls within the definition and thresholds for a Nationally Significant Infrastructure Project (NSIP) under sections 14(1) and 15 of the Planning Act 2008 (2008 Act). This is because it consists of a generating station with a gross electrical output capacity exceeding 50MW.
- 1.1.4. The DCO, if made, would be known as The Springwell Solar Farm Order 202[*]. A **Draft DCO [EN010149/APP/3.1]** has been submitted with the Application.
- 1.1.5. This Explanatory Memorandum has been prepared to explain the purpose and effect of each article of, and schedules to, the Order, as required by Regulation 5(2)(c) of The Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009 (the APFP Regulations). It should be read in conjunction with the suite of documents accompanying the Application, in particular the **Draft DCO [EN010149/APP/3.1]**, the **ES [EN010149/APP/6.1]**, the **Works Plans [EN010149/APP/2.3]**, **Land Plans [EN010149/APP/2.2]**, **Book of Reference [EN010149/APP/4.3]**, **Statement of Reasons [EN010149/APP/4.1]**, **Consultation Report [EN010149/APP/5.1]** and **Statement of Need [EN010149/APP/7.1]**.

1.2. Springwell Energyfarm Limited

- 1.2.1. The Applicant is a limited company registered at Companies House under company number 13484004 and whose registered office is at Alexander House 1 Mandarin Road, Rainton Bridge Business Park, Houghton Le Spring, Sunderland, England, DH4 5RA. More information on the Applicant's ownership and corporate structure is set out in the **Funding Statement [EN010149/APP/4.2]**.

1.3. The Site

- 1.3.1. For the purposes of the Application, the areas within the Site are divided into three parcels, being Springwell West, Springwell Central and Springwell East. These areas are each proposed for solar modules and associated infrastructure

and mitigation, with the main project substation (Springwell Substation) and the Grid Connection Corridor to connect into the proposed National Grid Navenby Substation included in the Springwell West parcel.

- 1.3.2. The Order Limits is the area within which the Proposed Development may be carried out. The Order Limits are shown on the **Land Plans [EN010149/APP/2.2]** and **Works Plans [EN010149/APP/2.3]**. The Order Land is the term used for the land shaded pink, blue or green on the Land Plans, and over which powers of compulsory acquisition or temporary possession are sought. The Order Land is slightly smaller than the Order Limits, as some areas within the Order Limits are shown as white, meaning no land powers are sought over them.
- 1.3.3. Information about the Site, including about the current land use and any environmental constraints, is provided in greater detail in the **ES Volume 1, Chapter 2: Location of the Proposed Development [EN010149/APP/6.1]**.

1.4. The Proposed Development

- 1.4.1. A detailed description of the Proposed Development can be found in the **ES Volume 1, Chapter 3: Proposed Development Description [EN010149/APP/6.1]**. It comprises a generating station of more than 50MW, being the NSIP, and is described in Work No. 1 in Schedule 1 to the Order. The Proposed Development also includes associated development, which comprises Work Nos. 2 to 9 in Schedule 1 to the Order. All elements of the NSIP are described in the sub-paragraphs below and the associated development is described in **Paragraphs 1.4.5 and 1.4.6**:
- **Work No. 1:** a ground mounted solar photovoltaic generating station with a gross electrical output capacity of over 50 megawatts, including —
 - solar PV modules fitted to mounting structures;
 - balance of solar system (BoSS) plant, which means inverters, transformers and switch gear that could be comprised of:
 - a) centralised inverters, transformers and switch gear placed on adjustable legs or metal skids. Each component will either be located outside on concrete pads, concrete columns or foundation slab or compacted hardcore material for each of the inverters and transformers and switch gear or housed together within a container sitting on a concrete foundation slab or compacted hardcore material; or
 - b) string inverters and combiner boxes attached either to mounting structures or a ground mounted frame, wired to or connected to switchgear and transformers on a concrete foundation slab or compacted hardcore material.
- 1.4.2. The description of Work No. 1 refers to a gross electrical output capacity of over 50MW. This is consistent with sections 14 and 15 of the 2008 Act which

stipulates that a generating station which exceeds an electrical capacity of 50MW will be a NSIP and therefore development consent will be required.

- 1.4.3. The description of the NSIP at Work No. 1 does not refer to an upper limit on the capacity of the generating station that development consent is being sought for. It is not considered that imposing an upper limit is desirable or necessary. The DCO includes reference to the means by which the parameters of the Authorised Development will be constrained and it is on this basis that the Environmental Impact Assessment has been undertaken, as set out in the **ES [EN010149/APP/6.1]** and explained further in relation to the 'consent envelope'. There is no reason to limit the electrical output capacity of the Proposed Development provided those parameters of the consent envelope are adequately captured in the Order. The Applicant is confident that those parameters are adequately secured in the DCO.
- 1.4.4. There are clear advantages in not imposing an upper limit on capacity. For example, the Applicant may take advantage of technological improvements and innovation that may emerge before construction, which would enable it to still construct the Proposed Development within the assessed Parameters but increase capacity beyond that which is currently anticipated. It is in the public interest and accords with national policy to facilitate efficient and maximum generation from renewable sources, which is explained further in the **Statement of Need [EN010149/APP/7.1]**. The approach taken has precedent in all the made Orders for solar NSIPs to date, including the **Cleve Hill Solar Park Order 2020**, **Longfield Solar Farm Order 2023**, the **Gate Burton Energy Park Order 2024** and the **Cottam Solar Project Order 2024**.
- 1.4.5. The associated development for the purposes of section 115 of the 2008 Act comprises Work Nos. 2 to 9 of the Proposed Development as provided for in Schedule 1 of the Order. This comprises the following elements:
- **Work No. 2:** works in connection with an onsite substation compound including the Springwell Substation and works associated with the substation, including switch rooms buildings and ancillary equipment, main collector compound and control building and ancillary structures, and monitoring and control systems (Work No. 2A). The Springwell Substation includes up to seven transformers and associated barriers for fire and noise mitigation, which are Work No. 2B in order to limit the area within which they can be located.
 - **Work No. 3:** works in connection with satellite collector compounds, including switchgear, transformers and control buildings housing monitoring equipment, storage, securing and welfare facilities.
 - **Work No. 4:** an energy storage facility comprising a battery energy storage system compound including battery energy storage system (BESS) units, transformers and associated bunding, various ancillary electrical equipment, containers or enclosures housing some or all elements of the BESS compound either together or separately, monitoring and control systems heating, ventilation and air conditioning (HVAC) systems, fire safety infrastructure

containers or similar structures to house spare parts and materials acoustic fencing and ancillary buildings.

- **Work No. 5:** works to lay high voltage electrical cables and access for the electrical cables, including works to lay electrical cables including 400 kilovolt cables connecting Work No. 2 into the National Grid Navenby Substation.
- **Work No. 6:** works to lay electrical cables up to 132 kilovolt connecting Work Nos 1, 2, 3, 4 and 5.
- **Work No. 7:** temporary construction and decommissioning compounds in connection with Work Nos. 1 to 6 including up to three primary temporary construction and decommissioning areas and up to five secondary temporary construction and decommissioning areas.
- **Work No. 8:** works to facilitate access to Work Nos. 1 to 7 and 9, including the creation of accesses from the public highway and visibility splays, works to alter the layout of any street or highway and to widen and surface the streets and to make and maintain passing places.
- **Work No. 9:** works to create, enhance and maintain green infrastructure and mitigation, including landscape and biodiversity mitigation and enhancement areas, habitat creation and management, laying down of permissive paths, signage and information boards, improvements to existing and laying down of new public rights of way, signage and information boards, earth bund, screening and community growing area.

1.4.6. The associated development includes such other works or operations in connection with Work Nos. 1 to 9, including:

- fencing, gates, boundary treatment and other means of enclosure;
- bunds, embankments, trenching and swales;
- works to the existing irrigation system and works to alter the position and extent of such irrigation system;
- surface water drainage systems, storm water attenuation systems including storage basins, oil water separators, including channelling and culverting and works to existing drainage networks;
- electrical, gas, water, foul water drainage and telecommunications infrastructure connections, diversions and works to, and works to alter the position of, such services and utilities connections;
- works to alter the course of, or otherwise interfere with, non-navigable rivers, streams or watercourses;
- Works for the provision of security and monitoring measures such as CCTV columns, security cabins, lighting columns and lighting, cameras, and lightning protection;
- improvement, maintenance, repair and use of existing streets, private tracks and access roads;

- laying down, maintenance and repair of new internal access tracks, ramps, means of access, footpaths, permissive paths, cycle routes and roads, crossings of drainage ditches and watercourses, including signage and information boards;
- temporary footpath diversions and closures;
- landscaping and biodiversity mitigation and enhancement measures including planting;
- tunnelling, boring and drilling works;
- earthworks, site establishments and preparation works including site clearance (including vegetation removal, demolition of existing buildings and structures); earthworks (including soil stripping and storage and site levelling) and excavations; the alteration of the position of services and utilities; and works for the protection of buildings and land;
- other works to mitigate any adverse effects of the construction, maintenance, operation or decommissioning of the Authorised Development; and

further associated development comprising such other works or operations as may be necessary or expedient for the purposes of or in connection with the construction, operation and maintenance of the Authorised Development but only within the Order limits and insofar as they are unlikely to give rise to any materially new or materially different environmental effects from those assessed in the **ES [EN010149/APP/6.1]**.

1.5. Phasing

- 1.5.1. The construction phase is anticipated to be split into two phases over a 48-month construction period and commissioning, and subject to being granted consent, the earliest construction is anticipated to start is in 2027. The final programme will depend on the detailed layout design, and potential environmental constraints, and how these impact on the timing of construction activities.
- 1.5.2. The Proposed Development currently has phased grid connection dates of 2028 and 2030. It is currently anticipated that construction works would commence at the earliest in Q1 2027 and run to Q4 2030, meaning there is the potential likelihood of overlapping construction works on the different parts of the Sites.
- 1.5.3. Requirement 3 in Schedule 2 to the Order requires a written scheme setting out the phasing of the construction of the Proposed Development (that is, the order and timing of which stages of the Proposed Development will be constructed), and the Requirements in Schedule 2 are drafted to allow phased discharge (or discharge for parts of the works) of the requirements and conditions.

1.6. Parameters of the Order and the "consent envelope"

- 1.6.1. The detailed design of the Proposed Development must be in accordance with the **Design Commitments [EN010149/APP/7.4]**, as secured in Requirements 5, 9 and 17 of the Order, and the **ES Volume 3, Appendix 3.1: Project**

Parameters [EN010149/APP/6.3], as secured in Requirements 5 and 9 of Schedule 2 of the Order. This approach is taken to ensure suitable flexibility in the design of the Proposed Development, such that new technology can be used, while ensuring that the impacts of the development will always comply with the **ES [EN010149/APP/6.1]**. The principle of using a design envelope is recognised as appropriate for a wide range of NSIPs and is described in PINS' Advice Note 9: Rochdale Envelope (July 2018).

1.6.2. Article 3 (Development consent etc. granted by this Order) grants development consent for the "Authorised Development" (the description of the Proposed Development described in Schedule 1). The consent for the Authorised Development is subject to two key controls, which together form the "consent envelope". These are:

- **Works Plans [EN010149/APP/2.3]** – in Schedule 1 the Authorised Development is divided into a series of component parts, referred to as "numbered works". Article 3(2) of the Order requires that the numbered works authorised by the Order are situated in the corresponding areas shown on the Works Plans.
- **Requirements** – Article 3(1) provides that consent for the Authorised Development is only given subject to compliance with the Requirements, set out in Schedule 2 to the Order.

1.6.3. The **design of the Proposed Development** is also controlled via Requirement 5 (Detailed design approval) of Schedule 2 of the Order which requires approval of details of the Proposed Development's design. The details submitted must accord with the **Design Commitments [EN010149/APP/7.4]** and the **ES Volume 3, Appendix 3.1: Project Parameters [EN010149/APP/6.3]**.

1.6.4. In addition to the **Design Commitments [EN010149/APP/7.4]** and the **ES Volume 3, Appendix 3.1: Project Parameters [EN010149/APP/6.3]**, other DCO Requirements, certified documents and plans will operate to control and manage the detailed design of the Scheme, as well as its construction, operation (including maintenance) and decommissioning. The way in which those mechanisms work together as an envelope within which the Authorised Development is to be undertaken, is explained in more detail below.

1.6.5. With respect to detailed design specifically, Requirement 5 (Detailed design approval) expressly requires that approved details accord with any details approved under other requirements in relation the approved battery safety management plan, landscape and ecology management plan, fencing and other means of enclosure, surface and foul water drainage, archaeology, operational noise and the approved public right of way and permissive path management plan.

1.6.6. The **ES Volume 3, Appendix 3.1: Project Parameters [EN010149/APP/6.3]** set out the maximum parameters of the Proposed Development and are the basis on which the assessment set out in the **ES [EN010149/APP/6.1]** has

been undertaken. The **Design Commitments [EN010149/APP/7.4]** are commitments aimed at ensuring the good design of the Proposed Development and the **Design Approach Document [EN010149/APP/7.3]** explains how these have been developed. Together, the **ES Volume 3, Appendix 3.1: Project Parameters [EN010149/APP/6.3]** and **Design Commitments [EN010149/APP/7.4]** capture the important parameters and controls that are necessary to ensure that the Proposed Development is constructed in such a way that the impacts and effects would not exceed the worst-case scenario assessed in the **ES [EN010149/APP/6.1]**.

1.6.7. In addition to these commitments and parameters, the design of the Proposed Development is also controlled by:

- approval and implementation of a battery safety management plan (Requirement 7);
- approval and implementation of the landscape and ecology management plan (Requirement 8) which includes delivery of biodiversity net gain as well as detail of green infrastructure and vegetation removal;
- approval and implementation of permanent fencing and other means of enclosure (Requirement 9);
- approval and implementation of any surface and foul water drainage scheme or system (Requirement 10);
- approval and implementation of the written scheme of investigation for archaeological mitigation (Requirement 11);
- in the case of Work Nos. 1 to 4, the requirement for the design of the Proposed Development to comply with noise rating levels in the **ES [EN010149/APP/6.1]** (Requirement 15);
- approval of details of the public rights of way to be created or improved and of the permissive paths to be created, and approval and implementation of the public right of way and permissive path management plan (Requirement 17); and
- the protective provisions (Schedule 15).

1.6.8. Where the **Design Commitments [EN010149/APP/7.4]** or the **ES Volume 3, Appendix 3.1: Project Parameters [EN010149/APP/6.3]** do not include guidance or controls for an aspect of a numbered work, this is justified on the basis of the Environmental Impact Assessment and having regard to the other controls in place via the measures listed above.

1.6.9. The **construction phase of the Proposed Development** (as set out in Schedule 1 of the Order and which is required to be constructed within the areas on the **Works Plans [EN010149/APP/2.3]**) is also controlled by:

- the implementation of a community liaison group (Requirement 6);

- approval and implementation of a battery safety management plan (Requirement 7);
- approval and implementation of the landscape and ecology management plan (Requirement 8);
- approval and implementation of temporary fencing and other means of enclosure (Requirement 9);
- approval and implementation of surface water drainage scheme and foul water drainage scheme or system (Requirement 10);
- approval and implementation of the written scheme of investigation for archaeological mitigation (Requirement 11);
- approval and implementation of the construction environmental management plan (Requirement 12), which in turn secures an outline site waste management plan, a cable and grid connection method statement, a horizontal directional drilling fluid breakout plan, a dust management plan, an emergency preparedness and response plan, a site waste management plan, an unexploded ordnance (UXO) risk management plan and a health and safety plan;
- approval and implementation of the construction traffic management plan (Requirement 14);
- the approval and implementation of the employment, skills and supply chain plan (Requirement 16);
- approval and implementation of the public right of way and permissive path management plan (Requirement 17);
- approval and implementation of a soil management plan (Requirement 18);
- the protective provisions (Schedule 15); and
- street works pursuant to relevant powers in Part 3 of the Order and the accompanying **Streets, Rights of Way and Access Plans [EN010149/APP/2.4]**.

1.6.10. The **ongoing operation and maintenance of the Proposed Development** is controlled by:

- approval and implementation of a battery safety management plan (Requirement 7);
- approval and implementation of the landscape and ecology management Plan (Requirement 8);
- approval and implementation of surface water drainage scheme and foul water drainage scheme or system (Requirement 10);
- approval and implementation of the operational environmental management plan (Requirement 13) which in turn secures a site waste management plan,

an emergency preparedness and response plan (including flood risk) and a health and safety plan (including flood risk and climate change);

- approval and implementation of the employment, skills and supply chain plan (Requirement 16);
- approval and implementation of the public right of way and permissive path management plan (Requirement 17);
- approval and implementation of a soil management plan (Requirement 18); and
- the protective provisions (Schedule 15).

1.6.11. Article 4 of the Order authorises the operation of the Authorised Development, and Article 5 allows the undertaker to “maintain” the Authorised Development, and such maintenance must not include works that are likely to give rise to any materially new or different effects that have not been assessed in the **ES [EN010149/APP/6.1]**.

1.6.12. The **decommissioning of the Proposed Development** is controlled by:

- Requirement 19 which requires that the date of decommissioning must be no later than 40 years following the date of final commissioning.
- approval and implementation of a battery safety management plan (Requirement 7);
- approval and implementation of a decommissioning environmental management plan (Requirement 19), which in turn secures a dust management plan, an emergency preparedness and response plan, a site waste management plan and a health and safety plan;
- approval and implementation of the employment, skills and supply chain plan (Requirement 16);
- approval and implementation of the public right of way and permissive path management plan (Requirement 17);
- approval and implementation of a soil management plan (Requirement 18); and
- the protective provisions (Schedule 15).

1.6.13. The Application seeks flexibility to undertake the Proposed Development within the above envelope, in particular within the maximum areas and parameters secured via the **Works Plans [EN010149/APP/2.3]**, **Design Commitments [EN010149/APP/7.4]** and the **ES Volume 3, Appendix 3.1: Project Parameters [EN010149/APP/6.3]**. As set out in the **ES Volume 1, Chapter 5: Approach to the EIA [EN010149/APP/6.1]** and the individual technical chapters, the Environmental Impact Assessment has assessed the upper extent of the areas and sizes allowed by the **Works Plans [EN010149/APP/2.3]** and the **ES Volume 3, Appendix 3.1: Project Parameters [EN010149/APP/6.3]**. As a result, the **ES [EN010149/APP/6.1]** has assessed a worst case and has

considered and confirmed that any development built within the maximum areas and parameters would have effects no worse than those assessed.

- 1.6.14. Any **Illustrative Layout Plans & Sections [EN010149/APP/2.5]** have been submitted to provide illustrative examples of the different design layouts that have been considered for the Proposed Development that could be built out within the "consent envelope" (the design aspect of which is controlled primarily through the **Works Plans [EN010149/APP/2.3]**, **Design Commitments [EN010149/APP/7.4]** and the **ES Volume 3, Appendix 3.1: Project Parameters [EN010149/APP/6.3]**). These are provided for illustration only within the **Design Approach Document [EN010149/APP/7.3]**, the **Illustrative Layout Plans & Sections [EN010149/APP/2.5]** and the **ES, Volume 2: Figures [EN010149/APP/6.2]** and are not sought to be secured.

2. The Purpose and Structure of this Document

- 2.1.1. This Explanatory Memorandum has been prepared to explain the purpose and effect of each article of, and the Schedules to, the Order, as required by Regulation 5(2)(c) of the APFP Regulations. This Explanatory Memorandum also explains why each article of, and Schedule to, the Order is required for the Proposed Development.
- 2.1.2. It also seeks to identify and explain departures from the Infrastructure Planning (Model Provisions) (England and Wales) Order 2009 (the "**model provisions**"). While the power for the Secretary of State to designate, and the requirement to have regard to, model provisions have both been removed by the Localism Act 2011, the Applicant considers that it is still relevant to note and explain variations made in the Order compared to the model provisions.
- 2.1.3. The Order includes a number of provisions to enable the construction, maintenance, operation and decommissioning of the Proposed Development. This reflects the integrated consenting objective of the 2008 Act regime. The provisions have been drafted to accord with the wide-ranging powers at section 120 of the 2008 Act, but also the limitations, requirements and exceptions imposed by section 120(8) and sections 122 to 152 so far as these are relevant to the Proposed Development. All powers provided for within the Order come within the scope of section 120 of, and Schedule 5 to, the 2008 Act.
- 2.1.4. The provisions contained in the Order are briefly described below and then considered in more detail in the following Sections:-
- **Part 1 (Preliminary):** Article 1 sets out what the Order may be cited as and when it comes into force. Article 2 sets out the meaning of the defined terms used in the Order;
 - **Part 2 (Principal Powers):** Articles 3 to 5 provide development consent for the Proposed Development, and allow it to be constructed, operated and maintained by the undertaker. Articles 6 and 7 relate to the application and modification of certain legislative provisions and defence to proceedings in respect of statutory nuisance respectively;
 - **Part 3 (Streets):** Articles 8 to 17 provide the undertaker with a suite of powers in relation to street works. The powers include the ability for the undertaker to be able to carry out works to and within streets; to alter the layout of streets; to construct and maintain new or altered means of access; to close temporarily public rights of way; to extinguish a claimed public right of way; to create or improve public rights of way; to enter into agreements with street authorities and provisions relating to traffic regulations;
 - **Part 4 (Supplemental Powers):** Articles 18 to 21 set out four supplemental powers relating to the discharge of water; undertaking protective works to buildings; the authority to survey and investigate land; and the removal of human remains;

- **Part 5 (Powers of Acquisition):** Articles 22 to 35 provide for the undertaker to be able to compulsorily acquire the Order Land and rights over and within it, and to be able to temporarily possess parts of the Order Land for the construction or maintenance of the Proposed Development. Article 23 sets out a time limit for the exercise of the compulsory acquisition powers and Article 25 provides for the undertaker to suspend or extinguish certain private rights. The provisions provide for compensation to be payable to affected persons in respect of these powers, where that is not already secured elsewhere. Articles 31 and 32 provide for the temporary use of land for constructing and maintaining the Proposed Development. Article 33 provides for powers in relation to the land and apparatus of statutory undertakers;
- **Part 6 (Miscellaneous and General):** Articles 36 to 50 include various general provisions in relation to the Order:-
 - Article 36 sets out who has the benefit of the powers contained in the Order and Article 37 sets out how those powers can be transferred.
 - Articles 38 and 39 provide (respectively) for how landlord and tenant law applies in relation to the Order and that the Order Land will be "operational land";
 - Articles 40 and 41 provide (respectively) powers in relation to trees which need to be removed or lopped and for hedgerows to be removed in relation to the Proposed Development and in relation to trees subject to tree preservation orders;
 - Articles 42 to 50 include provisions relating to the certification of plans and documents relevant to the Order; arbitration; protection for statutory undertakers through the protective provisions (set out in Schedule 15); service of notices under the Order; procedure in relation to approvals required under the Order; guarantees in respect of the payment of compensation; the incorporation of the mineral code; Crown rights; and confirming no double recovery of compensation.

2.1.5. There are then 16 Schedules to the Order, providing for:

- **Schedule 1** – the description of the Proposed Development;
- **Schedule 2** – the requirements that apply to the Proposed Development (i.e. the controls that apply to the Order, similar to planning conditions). Schedule 16 then contains details of the procedure for discharge of requirements required under the Order;
- **Schedule 3** – a list of the local legislation relating to drainage, infrastructure, land, planning, railways and water that the Order will disapply insofar as the provisions (in that local legislation) still in force are inconsistent with the powers contained in the Order;
- **Schedules 4 to 8** – matters in relation to street works and alterations, public rights of way, access to works and details of the streets subject to traffic regulation measures both during construction of the Authorised Development and permanently;

- **Schedule 9** – details of land in which only new rights may be acquired;
- **Schedule 10** – amendments to legislation to ensure appropriate compensation is payable where new rights over land are acquired under the Order;
- **Schedule 11** – details of land over which temporary possession may be taken;
- **Schedule 12** – details of hedgerows to be removed;
- **Schedule 13** – the documents and plans to be certified by the Secretary of State;
- **Schedule 14** – arbitration rules that apply to most arbitrations in connection with the Order;
- **Schedule 15** – provisions for the protection of statutory undertakers and their apparatus;
- **Schedule 16** – procedure for the discharge of requirements.

3. Purpose of the Order

- 3.1.1. The Proposed Development involves an onshore generating station with a capacity of over 50MW, located in England, and is therefore a NSIP under sections 14(1)(a) and 15 of the 2008 Act. The Applicant requires development consent under the 2008 Act in order to construct, operate, maintain and decommission the Proposed Development. Under section 37 of the 2008 Act, development consent may only be granted by a DCO, following an Application to the Secretary of State.
- 3.1.2. The Applicant is therefore making an Application to the Secretary of State for a DCO for the Proposed Development. In the Order, the Proposed Development is referred to as the "Authorised Development". The Order refers to the person authorised to exercise the powers in the Order as the "undertaker" and defines the undertaker as Springwell Energyfarm Limited.
- 3.1.3. The matters for which development consent is sought are summarised below and described more formally in Schedule 1 to the Order.
- 3.1.4. Section 115(1) of the 2008 Act provides that development consent may be granted for associated development, as well as for the NSIP. The Secretary of State must therefore be satisfied that all the elements included within the Authorised Development are either the NSIP or are associated development, in order to include them in the Order.
- 3.1.5. The solar photovoltaic generating station within Work No. 1 in Schedule 1 to the Order constitutes "development for which development consent is required", and as such is the NSIP.
- 3.1.6. The Order also includes the proposed development of BESS and associated development to allow for the storage, importation and exportation of energy to the National Grid, included at Work Nos. 2 to 9 of Schedule 1 of the Order. The Applicant has considered these works against the policy and criteria in DCLG 'Guidance on Associated Development applications for major infrastructure projects' (April 2013) (the "Guidance") - it is clear that all of these works come within the guidance and are clearly capable of being granted development consent by the Secretary of State pursuant to section 115 of the 2008 Act.
- 3.1.7. The approach taken by the Applicant between those parts of the Authorised Development which form the NSIP and those parts that form associated development follows the approach taken by other DCOs to date, including the **Cleve Hill Solar Park Order 2020**, the **Longfield Solar Farm Order 2022**, the **Gate Burton Energy Park Order 2024** and **Cottam Solar Project Order 2024**, each of which incorporate BESS as associated development.
- 3.1.8. In particular, Work Nos. 2 to 9 are:

- all directly associated with the NSIP, as they are all required to support the construction, maintenance or operation of the generating station, or to mitigate its impacts (paragraph 5(i) of the Guidance);
- all subordinate to the NSIP – none of them are an aim in themselves (paragraph 5(ii));
- not only necessary as a source of additional revenue for the Applicant, in order to cross-subsidise the cost of the NSIP (paragraph 5(iii));
- all proportionate to the nature and scale of the NSIP (paragraph 5(iv));
- all of a nature which is typically brought forward alongside a solar generating station (paragraph 6);
- all listed in or analogous to the types of associated development listed in Annexes A and B to the Guidance. Those annexes mention:
 - In Annex A, “Connections to national, regional or local networks”, including electricity networks and in Annex B, “substations”, “jointing pits”, “control buildings” and “underground lines” would include the electrical cabling, collector compounds, substation works and grid connection works (Work Nos. 2, 3, 5 and 6);
 - In Annex A, “monitoring apparatus” (Work Nos. 2 and 4);
 - In Annex A, “Formation of new or improved vehicular or pedestrian access (to stations, work sites etc), whether temporary or permanent”; highway improvements, “Alteration or construction of roads, footpaths”, “Parking spaces for workers” and “lay down areas” (Work Nos. 2, 5, 7, 8 and 9);
 - In Annex A, hard and soft landscaping would include landscaping and other works to mitigate adverse impacts (Work No. 9); and
 - In Annex A, “Security measures” and “Working sites, site offices and laydown areas” (Work Nos. 2, 4, 5, 7 and 9).

3.1.9. As the Order seeks to apply and modify statutory provisions, including those relating to the compulsory acquisition of land, the Order has been drafted as a statutory instrument, in accordance with sections 117 and 120 of the 2008 Act.

3.2. Compulsory Acquisition

3.2.1. In addition to providing for the construction, maintenance, operation and decommissioning of the Proposed Development, the Order will, in accordance with section 122, section 120(3) and Schedule 5 of the 2008 Act, authorise the acquisition of land and rights over land, and the extinguishment of, or interference with, interests in or rights over land.

3.2.2. The **Book of Reference [EN010149/APP/4.3]** sets out a description of, and interests included in, the Order Land, split by "plots", and these are shown on the **Land Plans [EN010149/APP/2.2]**. The **Book of Reference [EN010149/APP/4.3]** is divided into parts, dependent upon whether interests

are Category 1, 2 or 3 interests, whether there are easements/private rights, Crown Land or land subject to special parliamentary procedure and these interests are identified in the **Book of Reference [EN010149/APP/4.3]**. The Order provides for land to be compulsorily acquired, rights to be compulsorily acquired and other rights and interests that will be affected as well as for the temporary possession of land. The Order and the **Book of Reference [EN010149/APP/4.3]** should be read together with the **Land Plans [EN010149/APP/2.2]** and the **Statement of Reasons [EN010149/APP/4.1]**, which sets out the justification for the inclusion of compulsory acquisition powers in the Order.

3.2.3. Further information on the compulsory acquisition powers sought is provided in **Section 4.5** of this document.

3.3. Statutory Undertakers' Land and Apparatus

3.3.1. The interests held by each statutory undertaker identified by the Applicant as owning land or having a right to keep or access apparatus within the Order Limits are identified in the **Book of Reference [EN010149/APP/4.3]**.

3.3.2. Section 127(2) of the 2008 Act states that a DCO may only include provision authorising the compulsory acquisition of statutory undertakers' land to the extent that:

- the land can be purchased and not replaced without serious detriment to the carrying on of the undertaking; or
- the land can be replaced by other land belonging to or available for acquisition by the undertakers without serious detriment to the carrying on of the undertaking.

3.3.3. Section 127(5) of the 2008 Act states that a DCO may only include provision authorising the compulsory acquisition of a right over statutory undertakers' land by the creation of a new right over land to the extent that:

- the land can be purchased without serious detriment to the carrying on of the undertaking; or
- any detriment to the carrying on of the undertaking, in consequence of the acquisition of the right, can be made good by the undertakers by the use of other land belonging to or available for acquisition by them.

3.3.4. Section 138 of the 2008 Act states that a DCO may include provision for the extinguishment of rights of way, or rights to lay down, erect, continue or maintain apparatus on, under or over the land belonging to statutory undertakers for the purposes of their undertakings only if the Secretary of State is satisfied that the extinguishment is necessary for the purpose of carrying out the development to which the DCO relates.

3.3.5. The Order includes protective provisions in respect of statutory undertakers (refer to Article 44 and Schedule 15). The Applicant is currently seeking to agree the form of protective provisions with the affected undertakers. Further details as to how the tests under sections 127 and 138 of the 2008 Act have been satisfied are set out in the **Statement of Reasons [EN010149/APP/4.1]**.

4. Provisions of the Order

4.1.1. The Order consists of 50 operative provisions, referred to as articles and 16 Schedules. The articles are considered below in numerical order (split between the different Parts of the Order), and Schedules are considered along with the article which introduces them or to which they relate. Given the Order refers to the Applicant as the "undertaker", for ease when reading this document with the Order we use the term "undertaker" when explaining the provision of the Order below. Equally, the Proposed Development is referred to as the "Authorised Development" in the Order and so for ease this document refers to the "Authorised Development" when explaining the provisions of the Order.

4.2. Part 1 (Preliminary) and Part 2 (Principal Powers)

4.2.1. Articles 1 (*Citation and commencement*) and 2 (*Interpretation*) are preliminary provisions. Article 1 provides for the way in which the Order should be cited and when it takes effect.

4.2.2. Article 2 (*Interpretation*) provides for the interpretation of the rest of the Order, including the Schedules. Where appropriate, some Schedules also contain provisions setting out what terms mean in that particular Schedule. Article 2 makes alterations to the model provisions to accommodate departures from model provisions elsewhere in the Order, and to add required definitions, including:

- definitions of documents submitted as part of the Application and which are referred to in the Order have been added. These documents are more fully identified in the table in Schedule 13 to the Order.
- the definition of "apparatus" has the same meaning as in Part 3 of the New Roads and Street Works Act 1991. However, for the purposes of the Order this has been expanded to include pipelines, aerial markers, cathodic protection test posts, field boundary, markers, transformer rectifier kiosks, electricity cables, telecommunications equipment and electricity cabinets. This is required to ensure that the definition of apparatus is sufficiently broad to encompass the type of apparatus that the undertaker may encounter when constructing the Authorised Development. This definition has precedent in the **Longfield Solar Farm Order 2023**, the **Gate Burton Energy Park Order 2024** and the **Mallard Pass Solar Farm Order 2024**.
- the definition of "Authorised Development" means the Authorised Development described in Schedule 1 to the Order which is development within the meaning of section 32 of the 2008 Act. The definitions of "ancillary works" and "authorised project" from the model provisions have not been used in the Order, instead the concept of associated development is included in the definition of "Authorised Development" and is described in detail in Schedule 1, as it is considered that this drafting is neater. The definition of "Authorised Development" is consistent with other made Orders such as the **Longfield Solar Park Order 2023** and the **Cottam Solar Project Order 2024**.

- the definition of "commence" is defined so as to exclude "permitted preliminary works". This exclusion is required to enable the undertaker to carry out certain preparatory works prior to the submission of relevant details for approval under the requirements contained in Schedule 2 to the Order so that certain works can be carried out without "commencing" the Authorised Development, in order to build the required flexibility into how the Authorised Development can be constructed. The works identified in the "permitted preliminary works" include pre-commencement activities such as surveys and site investigations which are considered appropriate as the nature of these works (i.e. non-intrusive, above ground works or actions) means they are not expected to give rise to environmental effects requiring mitigation. However, the undertaker does recognise that prior to some of the works identified as "permitted preliminary works", there may be a requirement to submit details to the relevant planning authority. Where this is the case, the requirement expressly prevents the "permitted preliminary works" from being carried out until those details have been approved. The permitted preliminary works include "Work No. 8 (works to facilitate access to Work Nos. 1 to 7 and 9)", which are the highway works (including highway improvements, creation of accesses) included in Work No. 8 in Schedule 1. Work No. 8 is proposed to be a permitted preliminary work as a response to the Applicant's experience from the implementation of another made solar DCO, where highway works have inadvertently triggered certain obligations that are not strictly necessary to be in place at the stage the highway works are being undertaken. It is also considered that, firstly, given Work No. 8 is also undertaken pursuant to the powers in Part 3 of the Order, and secondly, that the Applicant has carefully considered each requirement in Schedule 2 and specifically included Work No. 8 as part of "commence" where mitigation or management is needed with respect to Work No. 8, sufficient controls are in place with respect to this works package and it is appropriate that it is a permitted preliminary work.
- a definition of "maintain" has been added to make clear what activities are authorised under Article 5 (refer to **Paragraph 4.2.10** of this document) during the operation of the Authorised Development;
 - The definition has been drafted to directly reflect the nature and context of the Authorised Development, which will need to be properly maintained, managed and protected throughout its operational lifetime. The drafting, therefore, reflects this operational period and likely framework of maintenance that will be required while enabling technological and practice advancement and improvements within identified environmental performance standards. Therefore, some flexibility must be built-in to what maintenance of the Authorised Development will involve, particularly to keep up with changing standards and controls and advances in technology;
 - For the purposes of the Authorised Development, examples of the activities anticipated to be covered are listed below:
 - **Maintenance and inspection:** Throughout the life of the Authorised Development there will be a planned maintenance regime and, on

occasion, the need for unplanned maintenance due to plant failures. It is anticipated that there will be up to 24 permanent staff onsite during the operational phase, with additional staff attending when required for maintenance, replacement of solar equipment, vegetation management and cleaning;

- **Repair/Refurbish/Replaced:** Through the planned maintenance regime and indeed through any unplanned maintenance required due to plant failures, it is likely that some plant and equipment, particularly those with moving parts, will need to be repaired or refurbished or indeed replaced. **Table 3.20** of the **ES Volume 1, Chapter 3: Proposed Development Description [EN010149/APP/6.1]** sets out the expected service life of the various components of the Proposed Development and this has informed the environmental assessment;
 - **Adjust and alter:** Through the planned maintenance regime, and indeed outside the planned maintenance regime, there may be a need to adjust or alter elements comprising the Authorised Development to respond to changing conditions;
 - **Remove:** Adjustment and replacement activities will require plant, equipment and material to be removed;
 - **Reconstruct:** If, for example, a part has to be dismantled in order to be repaired or refurbished, then that part will need to be reconstructed;
 - **Improve:** Technology will improve over the life of the Authorised Development and therefore there may be opportunities to "improve" the workings of the plant and equipment by, for example, the removal of an old part and replacing it with a new, more efficient part.
- the definition of "Order land" means the land shown pink, blue or green on the **Land Plans [EN010149/APP/2.2]** which is within the limits of land to be acquired and described in the **Book of Reference [EN010149/APP/4.3]**. This land is coloured pink (land to be permanently acquired), blue (land in which the undertaker can create and acquire new rights) and green (land in relation to which rights of temporary possession only can be exercised by the undertaker);
 - the definition of "Order limits" means the limits shown on the **Land Plans [EN010149/APP/2.2]** and **Works Plans [EN010149/APP/2.3]** within which the Authorised Development may be carried out and land acquired or used;
 - the definition "grid connection works" (that part of the Authorised Development identified in work numbers 5, 7, 8 and 9 (to the extent work numbers 7, 8 and 9 are necessary in connection with work number 5)) has been used to differentiate the works required to connect into the proposed National Grid Navenby Substation for the purposes of giving the benefit of those works to both the undertaker and National Grid;
 - the definition of "statutory undertaker" includes reference to a public communications provider defined by section 151(1) of the Communications Act 2003. This is on the basis that a "public communication provider" is providing

a network or service to members of the public and, insofar as they may have assets or apparatus within the Order Limits, it is considered appropriate to ensure that this Order applies equally to those providers as statutory undertakers under section 127(8) of the Planning Act 2008. There is precedent for this approach, for instance the **Longfield Solar Park Order 2023**;

- the definition of "street works" has been amended to refer to the works listed in the street works Article (Article 8(1)) so as to ensure consistency between the powers in the Article and the definition itself; and
- the "undertaker" is defined as Springwell Energyfarm Limited, who has the benefit of the provisions of the Order, subject to the provisions of Article 36 (refer to **Paragraph 4.6.1** of this document).

4.2.3. Paragraph (2) of Article 2 has been included to reflect that "rights over land" include references to do or restrain or to place and maintain anything in, on or under land or in the airspace above its surface and to any trusts and incidents, including restrictive covenants. Paragraph (2) also makes it clear that references to the imposition of restrictive covenants are references to the creation of rights over land which interfere with the interests or rights of another.

4.2.4. Paragraphs (3) to (7) of Article 2 have been added to provide clarity (respectively) that all distances, directions and lengths are approximate; that references to numbered works are to the works as described in Schedule 1 and shown on the **Works Plans [EN010149/APP/2.3]**; as to how the word "includes" is to be construed; that any statutory body includes that body's successor in title; and that all areas described in the **Book of Reference [EN010149/APP/4.3]** are approximate. Paragraph (8) confirms that references within the Order to materially new or materially different environmental effects (in the context of the Authorised Development or part of it not being authorised if it would result in such effects), are not intended to apply where the effects are different to those assessed in the **ES [EN010149/APP/6.1]** by virtue of being an adverse effect that has been reduced or avoided, or a positive effect that has increased in significance. Without this clarification, the "materially new or materially different" provisions could have the inadvertent consequence of not encouraging a reduction in adverse effects or an increased benefit from a positive effect at detailed design.

4.2.5. Article 3 (*Development consent etc. granted by this Order*) grants development consent for the Authorised Development. This article is adapted from the model provisions. Schedule 1 describes the Authorised Development in detail, split into 'work numbers', each of which represents different sections or parts of the Authorised Development. This split of the Authorised Development between different work numbers enables the Order to refer to different parts of the Authorised Development by citing the relevant work number. The content of the works contained within each work number is described in greater detail in **Section 1.4** of this document.

- 4.2.6. Paragraph (2) of Article 3 requires that the works authorised by the Order are situated in the areas shown on the **Works Plans [EN010149/APP/2.3]** (that is, the limits of deviation for each numbered work). This is in order to provide certainty as to what has been consented by the Order, in respect of which areas of land.
- 4.2.7. The purpose of Article 3(2) is to provide the undertaker with a necessary, but proportionate, degree of flexibility when constructing the Authorised Development, reducing the risk that the Authorised Development as approved cannot later be implemented for reasons which, at the time the Application was made and the development consent was granted, could not reasonably have been foreseen. It also gives a proportionate amount of flexibility for the detailed design of the Authorised Development within the set limits.
- 4.2.8. Limits of deviation and parameters are appropriate in the current Order as they serve to precisely define the Authorised Development by reference to the **Works Plans [EN010149/APP/2.3]**, while preserving a sensible amount of flexibility in the implementation of the Authorised Development to allow for variances in ground conditions and choice of appropriate equipment and technology. The **ES [EN010149/APP/6.1]** accompanying the Application for development consent has assessed the Authorised Development within the full envelope provided by the limits of deviation, and so development within this envelope will not create effects that exceed the worst-case scenario assessed in the **ES [EN010149/APP/6.1]**. Further detail in this respect is provided in **Section 1.6** of this document.
- 4.2.9. Article 4 (*Operation of generating station*) permits the operation and use of the generating station comprised in the Authorised Development and is included pursuant to section 140 of the 2008 Act. Article 4(2) specifically preserves the need for the undertaker to obtain any other operational consent that may be needed for the generating station, in addition to the Order. It is included so that the undertaker has powers to operate the generating station. "Generating station" in this Article would include the energy storage facility. The drafting of Article 4 adopted by the Applicant is in keeping with made energy DCOs such as the **Little Crow Solar Park Order 2022** and the **Longfield Solar Park Order 2023**.
- 4.2.10. Article 5 (*Power to maintain authorised development*) provides for the maintenance of the Authorised Development at any time and is required so that the undertaker has power to maintain the Authorised Development. Article 5 reflects the terms of the model provisions, but text has been added to make clear that maintenance must be in accordance with the provisions of the Order. Article 5(2) restricts maintenance to the Order Limits in order to provide a defined parameter within which this power can be exercised. A definition of "maintain" has been included, as referred to above, so that it is clear what the term involves. The **ES [EN010152/APP/6.1]** has assessed maintenance as defined in the Order and therefore Article 5(3) does not permit the undertaker to undertake such maintenance activities if they will give rise to any materially new

or different environmental effects to those identified in the **ES [EN010152/APP/6.1]**.

- 4.2.11. Article 6 (*Disapplication and modification of statutory provisions*) disapplies a number of statutory provisions. Section 120 of the 2008 Act makes comprehensive and wide-ranging provision about what may be included in a DCO, as part of the 2008 Act's integrated approach to consenting. Section 120(5) provides that, subject to specified limitations and requirements, a DCO may apply, modify or exclude a statutory provision which relates to any matter for which provision may be made in the Order; and make amendments, repeals or revocations of statutory provisions of local application. It is common for DCOs to contain such provisions, although the scope and content inevitably differs according to the circumstances of different projects. Precedent for most of the provisions sought for this Order can be found in the **Longfield Solar Farm Order 2023**, the **Gate Burton Energy Park Order 2024** and the **Mallard Pass Solar Farm Order 2024**.
- 4.2.12. Article 6 provides for the disapplication of the following specified provisions:
- section 23 of the Land Drainage Act 1991, which prohibits the obstruction and other works in watercourses without the consent of the lead local flood authority or relevant internal drainage board;
 - section 32 of the Land Drainage Act 1991, which would inappropriately allow the provisions of the Order relating to drainage to be revisited;
 - the provisions of any byelaws made by drainage undertakers under section 66 of the Land Drainage Act 1991;
 - the provisions of any byelaws made, or having effect, under paragraphs 5, 6 or 6A to Schedule 25 of the Water Resources Act 1991;
 - section 118 of the Water Industry Act 1991, which relates to the discharge of any trade effluent into public sewers;
 - Regulation 12 of the Environmental Permitting (England and Wales) Regulations 2016, only insofar as a flood risk activity permit(s) would be required under this Regulation; and
 - the provisions of the Neighbourhood Planning Act 2017 in so far as they relate to temporary possession of land under articles 31 and 32 of this Order. At present the reforms to the temporary possession regime contained in the Neighbourhood Planning Act 2017 have not yet been commenced (nor consulted on). When this may happen is uncertain, as are the detailed implications of implementation for the Authorised Development. A DCO should achieve certainty, and it is therefore appropriate and necessary to disapply the reforms whilst taking account of their principles in the relevant articles of the Order, these being articles 31 and 32. This approach has precedent and has been accepted by the Secretary of State; see for example the **Cleve Hill Solar Park Order 2020**, the **Longfield Solar Farm Order 2023**, the **Mallard Pass Solar Farm Order 2024** and the **Gate Burton Energy Park Order 2024**.

- 4.2.13. These disapplications are sought on the basis that they address matters whose merits and acceptability can, and will, already have been sufficiently considered and resolved if the Order is made, notably in relation to the provisions under the Land Drainage Act 1991, the Water Resources Act 1991, the Water Industry Act 1991 and the Environmental Permitting (England and Wales) Regulations 2016 through protective provisions for the protection of the relevant drainage authorities (Part 3 of Schedule 14 to the Order) (in discussions with the Environment Agency, it has confirmed it has no assets within the Order limits and therefore its position is understood to be that protective provisions are not required). Such matters should therefore not be the subject of further regulatory consideration or control, which would cause unnecessary uncertainty and duplication, and may unjustifiably delay the implementation of the Authorised Development.
- 4.2.14. Section 150 of the 2008 Act only allows requirements for prescribed consents to be disappplied if the relevant body has consented to this. The relevant consents, where applicable, are being sought in parallel with the negotiation of appropriate protective provisions, which will ensure that the disapplications will not prejudice the statutory objectives and responsibilities of the relevant regulators. The Applicant's approach to obtaining the other consents required for the Authorised Development is set out in greater detail in the **Schedule of Other Consents and Licences [EN010149/APP/3.3]**.
- 4.2.15. Paragraph 2 of Article 6 also applies section 9 of the Forestry Act 1967 to any felling required as a result of the Authorised Development. Section 9(1) of the 1967 Act provides that a Forestry Commission licence is required for felling growing trees. Section 9(4)(d) disappplies the requirement from felling required to implement development authorised by a planning permission – but not to development authorised by a DCO. Paragraph (2) of Article 6 extends the exception to any trees felled as a result of the Authorised Development.
- 4.2.16. Paragraph 3 of Article 6 provides for the modification of Regulation 6(1) of the Hedgerows Regulations 1997 to provide that removal of any hedgerow to which the Hedgerow Regulations 1997 relates is permitted for the carrying out of any development or the exercise of any functions which have been authorised by the Order. This has precedent in other DCOs including the **Sheringham Shoal and Dudgeon Extensions Offshore Wind Farm Order 2024**.
- 4.2.17. Article 6(4) in effect disappplies the Community Infrastructure Levy Regulations 2010, by making clear that any building comprised in the Authorised Development is to be deemed to be of a type that does not trigger liability for payment of the Community Infrastructure Levy.
- 4.2.18. In addition, the Applicant has conducted a review of any local legislation that might conflict with the powers and rights sought in the Order. The Applicant has included a list of the historic legislation that it seeks to disapply in Schedule 3, which relates to matters including railways, river navigation, fisheries and water within, and in the vicinity of, the Order Limits. This list has been prepared taking a precautionary approach, because in some cases it was difficult to conclusively

determine whether or not the provisions of the legislation were relevant to the Order, given that plans were not available in respect of the majority of the Acts considered to make clear their precise geographic scope. Article 6(1)(g) disapplies the legislation listed in Schedule 3 in so far as the provisions still in force are inconsistent with how the powers in the Order can be exercised.

- 4.2.19. Article 6(5) permits certain development authorised by a planning permission granted under the 1990 Act that is within the Order limits to be carried out pursuant to the terms of the planning permission without breaching the Order. This provision ensures that the undertaker does not breach section 161 of the 2008 Act in carrying out certain development pursuant to a grant of planning permission. These provisions have precedent in the **M20 Junction 10a Development Consent Order 2017** and the **A30 Chiverton to Carland Cross Development Consent Order 2020**.
- 4.2.20. Article 6(6) addresses the Supreme Court's ruling in *Hillside Parks Ltd v Snowdonia National Park Authority 2022 UKSC [30]*. That judgment relates to planning permissions granted under the 1990 Act. It holds that, unless there is an express provision otherwise, where development has taken place under one permission, whether another planning permission may lawfully be implemented depends upon whether it remains physically possible to carry out the development authorised by the second permission in light of what has already been done under the first permission.
- 4.2.21. Article 6(6) ensures that enforcement action is not taken in respect of planning permissions granted under the 1990 Act or development consent orders made under the 2008 Act or consents granted by the Secretary of State pursuant to section 36 of the Electricity Act 1989 which are inconsistent with the works and exercise of powers under the Order. The provision is based on Article 3(3) of the **Lake Lothing (Lowestoft) Third Crossing Order 2020**. However, it differs from that precedent in that the provision reflects the terminology used by the Supreme Court in the Hillside case, and confirms that relevant permissions which conflict with the Proposed Development can proceed without the risk of enforcement action being taken notwithstanding any incompatibility between the Proposed Development and the development authorised under a planning permission. In addition, it makes clear that the provision also applies to development consent orders made under the 2008 Act and section 36 consents under the Electricity Act 1989 (notwithstanding that this was not at issue in the Hillside judgment). It is considered this is necessary to confirm that developments are not prevented.
- 4.2.22. Article 6(7) has been inserted to deal with the converse situation covered by Article 6(6) and confirms that development under other consents is not to prevent activity authorised under the Order.
- 4.2.23. Without paragraphs (6) and (7) there is a significant risk of the Proposed Development or other permissions and consents being undeliverable or subject to enforcement action. This is a particular issue for the Proposed Development given there are existing planning permissions that overlap the Order limits.

- 4.2.24. Article 6(8) defines “enforcement action” to make clear what this term means under the 1990 and 2008 Acts, to aid clarity for all Interested Parties.
- 4.2.25. Article 7 (*Defence to proceedings in respect of statutory nuisance*) provides that no person is able to bring statutory nuisance proceedings under the Environmental Protection Act 1990 in respect of noise, if the noise is created in the course of carrying out construction, maintenance or decommissioning of the Authorised Development and for which notice has been given under section 60 or consent obtained under section 61(9) of the Control of Pollution Act 1974 or which cannot be reasonably avoided as a consequence of the Authorised Development. Whilst the **Statutory Nuisance Statement [EN010149/APP/7.5]** confirms that there is no statutory nuisance expected as a result of the Authorised Development, the Applicant has continued to include Article 7 in the DCO as it is a model provision, in recognition that should such noise arise, that provision will provide sufficient definition of its consequences in an appropriate and balanced manner. It should be noted that Requirement 15 relates to operational noise.
- 4.2.26. Article 7 is precedented in all made solar DCOs, including the **Longfield Solar Farm Order 2023**, the **Gate Burton Energy Park Order 2024**, the **Mallard Pass Solar Farm Order 2024** and the **Sunnica Energy Farm Order 2024**.

4.3. Part 3 (Streets)

- 4.3.1. Article 8 (*Street works*) allows the undertaker to carry out certain works to a street for the purposes of the Authorised Development. It is necessary because implementation of the Authorised Development will require works to be undertaken to streets. Schedule 4 sets out the streets that are subject to street works, and the nature of those works, thereby clarifying the extent of the powers. Article 8 is a model provision; however, it has been modified to bring in sections 54 to 106 of the New Roads and Street Works Act 1991 to apply to any street work carried out pursuant to paragraph (1). This provides protection for the street authority for the street in question. In addition, the model provision has been extended in paragraph (1)(e) to provide for works which may be required to any culvert under a street. This article has precedent in the **Longfield Solar Farm Order 2023**, the **Gate Burton Energy Park Order 2024** and the **Cottam Solar Project Order 2024**.
- 4.3.2. Article 9 (*Application of the permit scheme*) This article deals with the relationship between the Order powers and the traffic management permit scheme operated by Lincolnshire County Council. Article 9(1) confirms that the permit scheme applies with the modifications set out in Article 9 to street works carried out under Article 8. Paragraphs (2) and (3) deal with refusal of a permit or the imposition of conditions and paragraph (4) deals with the right to appeal using the mechanism set out in Schedule 16 (Procedure for discharge of requirements). This article has been included based on drafting included in the draft DCO for **Viking CCS Pipeline**, at the suggestion of Lincolnshire County Council. Similar wording is included in the **Southampton to London Pipeline**

Development Consent Order 2020 and the **National Grid (Bramford to Twinstead Reinforcement) Order 2024**. The Applicant will continue discussions with Lincolnshire County Council as to the need for this article as well as any additional controls associated with the street works articles in Part 3 of the **Draft DCO [EN010149/APP/3.1]**. The **Draft DCO [EN010149/APP/3.1]** and any associated control documents will be updated throughout the course of the Examination, to reflect any agreement in this respect.

- 4.3.3. Article 10 (*Power to alter layout, etc., of streets*) allows the undertaker to alter the layout of or carry out any works in a street. Schedule 5 then sets out the permanent alterations to streets. This Article is necessary because, in order to construct, operate, maintain and decommission the Authorised Development, the undertaker will need to alter street layouts and establish suitable accesses to ensure that the Authorised Development can be accessed effectively while ensuring there is minimal disruption to the local highway network. The powers conferred by paragraph (2) (which is a general power enabling the undertaker to alter the layout of any street and alter remove, replace and relocate any street furniture) require the consent of the street authority before they can be exercised. Article 10 has precedent and appears in the **Longfield Solar Farm Order 2023**, the **Gate Burton Energy Park Order 2024** and the **Cottam Solar Project Order 2024**.
- 4.3.4. Article 11 (*Status of public rights of way constructed or improved*) sets out the status that public rights of way created under the Order will have upon completion. Public rights of way identified as "public rights of way created" in Part 1 of Schedule 6 (Streets and public rights of way) will have the status identified in column (3) of that Part of the Schedule from the date that the highway authority is satisfied that they have been constructed in accordance with details approved under requirement 17 in Schedule 2. Precedent for this Article can be found in Article 16 of the **Hinkley Point C (Nuclear Generating Station) Order 2013** and Article 17 of the **Sizewell C (Nuclear Generating Station) Order 2022**, both of which created a number of footpaths within the Order limits. One public right of way listed in Part 1 of Schedule 6 is an existing footpath for which powers are sought to upgrade it so that it becomes a bridleway. The Applicant notes that for the purposes of section 136 of the 2008 Act, whilst the provision does effectively close a public right of way (the existing footpath), an alternative is provided in the form of the new bridleway.
- 4.3.5. Article 12 (*Construction and maintenance of new and altered streets*) provides that each of the streets constructed, improved or altered pursuant to the powers in articles 10 and 11 (this includes the construction or improvement of public rights of way) must be completed to the reasonable satisfaction of the highway authority and, unless otherwise agreed, be maintained at the undertaker's expense for a period of 12 months from their completion. Thereafter, maintenance will be the responsibility of the highway authority. The purpose of this Article is to define who will be responsible for the maintenance of new and altered streets following their construction or carrying out of works and it is

required to provide certainty as to who will be responsible for such maintenance.

- 4.3.6. Paragraphs (2) and (3) mirror the defence in section 58 of the Highways Act 1980 where the undertaker is subject to an action for damages and has taken such care as was reasonably required in the circumstances to secure that the street was not dangerous to traffic. This Article (and the incorporation of the defences in particular) is similar to Article 10 in the **Gate Burton Energy Park Order 2024**, the **Sunnica Energy Farm Order 2024** and the **Mallard Pass Solar Farm Order 2024**.
- 4.3.7. Article 13 (*Temporary prohibition or restriction on use of streets and public rights of way*) provides for the temporary closure, prohibition of the use, restriction of use, authorisation of use, alteration or diversion, of streets or public rights of way for the purposes of constructing or maintaining the Authorised Development. It is required because, in particular, the undertaker will need to temporarily close certain public rights of way and one street in order to construct the Authorised Development. Powers are also included in order to manage the use of public rights of way during construction. The public right of way and permissive path management plan, secured by requirement 17, will manage the closures of public rights of way, including agreeing with the relevant planning authority temporary diversions using existing routes. No permanent stopping up or diversion of public rights of way is required. Schedule 6 is comprised of three parts that are relevant to this article (temporary prohibition or restriction of the use of streets; temporary prohibition or restriction of public rights of way; and temporary management of public rights of way).
- 4.3.8. The authorisation under Article 13 of the use of motor vehicles over public rights of way where there is no public right to use motor vehicles is necessary to enable the undertaker to access parts of the Authorised Development with construction and maintenance plant, equipment and personnel which would otherwise be severed by public rights of way. The Article broadly follows the approach in the model provisions (save that it applies to public rights of way as well as streets generally) in that it contains provisions of general application and then also in relation to the specific public rights of way that are set out in Schedule 6 to the Order and as shown on the **Streets, Rights of Way and Access Plans [EN010149/APP/2.4]**. Article 13 mirrors Article 11 of the model provisions in providing that where the public right of way is specified in a Schedule to the Order that there is a requirement to consult the street authority, but there would be no need to obtain its consent. In respect of other public rights of way not specified in a schedule to the Order there would be a requirement to obtain the consent of the street authority. Article 17 (see below) deals with traffic regulation more widely.
- 4.3.9. Article 13(5) provides that compensation is payable in respect of loss suffered by the suspension of any private rights of way. This provision is required so that persons who temporarily lose private rights of way because of the suspension of public rights of way can be appropriately compensated. Paragraph (6)

provides an additional power to the undertaker which allows it to use any public right of way temporarily stopped up as a temporary working site (which is not in the model provision). Similar wording to this Article has been used in other made Orders including Article 11 of the **Longfield Solar Farm Order 2023** and the **Sunnica Energy Farm Order 2024** and Article 12 of the **Drax Power Station Bioenergy with Carbon Capture and Storage Extension Order 2024**.

- 4.3.10. Article 14 (*Claimed public right of way*) seeks to provide clarity on the potential scenario where a public right of way is claimed in the future via an application to Lincolnshire County Council using a Definitive Map Modification Order (DMMO) (or such other means). The Applicant is aware from discussions with the County Council that there is the possibility that a public right of way could be claimed during the lifetime of the Proposed Development (shown between points PC-A1 and PC-A2 on sheets 12 and 13 of the **Streets, Rights of Way and Access Plans [EN010149/APP/2.4]**), and it is therefore considered prudent for the Order to deal with this matter to provide certainty about what would happen should a new right of way be created.
- 4.3.11. The article allows the DMMO application process to run its course and reach its conclusion. If a new right of way should be created as a result of the process, then the Applicant can use the powers under the article to stop it up.
- 4.3.12. Where the claimed route is stopped up, all public rights of way over or along the route are also extinguished and private rights over or along the route are extinguished or cease to have effect (subject to the provisions in Article 25 (private rights)). The undertaker can use as much of the route as is bounded on both sides by land owned by the undertaker as necessary for the Authorised Development (paragraph 2(c)). Article 14(7) provides that compensation is payable in respect of loss suffered by the suspension of any private rights of way. This provision is required so that persons who temporarily lose private rights of way because of the suspension of public rights of way can be appropriately compensated. This article has precedent in the **Mallard Pass Solar Farm Order 2024**. To the extent the tests in section 136 of the 2008 Act apply, the Applicant is providing an alternative route in this location, as part of the Proposed Development.
- 4.3.13. Article 15 (*Access to works*) is a model provision which gives the undertaker powers to form new or to improve existing means of access for the purposes of the Authorised Development, as set out in Schedule 7 (access to works) to the Order. This article is necessary because the undertaker will need to create or improve existing means of access for the purposes of the Authorised Development. The Article also provides that other means of access or works can also be provided in other locations reasonably required for the Authorised Development with the approval of the relevant planning authority, in consultation with the highway authority. In addition, the Article also requires the undertaker to restore any access that has been temporarily created under the Order to the reasonable satisfaction of the street authority.

- 4.3.14. Article 16 (*Agreements with street authorities*) is a model provision which authorises street authorities and the undertaker to enter into agreements relating to strengthening, improvement, repair or reconstruction of any streets, stopping up, prohibition, restriction, alteration or diversion of any street, works authorised under Articles 9 (street works), 10 (power to alter layout, etc., of streets) and 12 (construction and maintenance of new and altered streets) of the Order and the adoption of works. The Applicant has removed reference to the ability to enter into an agreement with a street authority to allow the construction of any new street and the maintenance of any bridge or tunnel carrying a street over or under the Authorised Development as those powers are not required for the Authorised Development. This provision has precedent in the **Riverside Energy Park Order 2020** and the **Longfield Solar Farm Order 2023** and is required so that the undertaker may enter into agreements with the relevant street authorities.
- 4.3.15. Article 17 (*Traffic regulation measures*) provides the undertaker with powers to place temporarily traffic signs and signals, temporarily close streets, and temporarily and permanently change speed limits in the extents of the roads specified in Schedule 8 (traffic regulation measures). This Schedule identifies the relevant roads and specifies the extents of the roads that will be subject to the various controls, and is divided into four parts, reflecting the different traffic regulation measures sought: temporary speed limits, temporary road closures, temporary traffic signals, and permanent speed limits. The specific measures are required to safely regulate traffic during the construction of the Authorised Development, and in the case of the permanent speed limit change to safely regulate traffic beyond construction. These measures are shown on the **Traffic Regulations Plans [EN010149/APP/2.6]**. Paragraphs (2) and (3) include general powers that would authorise other temporary traffic regulation measures, for the purposes of the construction or decommissioning of the Authorised Development. The inclusion of these powers is justified as they allow a degree of flexibility to respond to changing conditions on the road network over the lifetime of the Authorised Development. The general powers are appropriately regulated as the power in paragraph (2) may only be exercised with the consent of the traffic authority concerned, and power in paragraph (3) is directly related to the power in paragraph (2). Any provision made by the undertaker under Articles 17(1) – (3) has effect as if duly made by the traffic authority in whose area the road is situated as a traffic regulation order under the Road Traffic Regulation Act 1984 and is deemed to be a traffic order for the purposes of Schedule 7 to the Traffic Management Act 2004 and (in the case of traffic signs and signals) the Traffic Signs Regulations and General Directions 2016. The Article is not in the general model provisions but is common in orders granting permission for infrastructure projects where it is necessary in the interests of public safety during construction of the Authorised Development for the undertaker to put in place some temporary restrictions on road usage. The powers under this Article are provided for in section 120(5)(a) of the 2008 Act. For example, similar provisions are contained within the **Great Yarmouth Third River Crossing Development Consent Order 2020**, the **Sunnica Energy Farm Order 2024** and the **Gate Burton Energy Park Order**

2024. The drafting in relation to the permanent speed limit change is based on drafting from **Sizewell C (Nuclear Generating Station) Order 2022.**

4.4. Part 4 (Supplemental Powers)

- 4.4.1. Article 18 (*Discharge of water*) is a model provision that allows the undertaker to discharge water into any watercourse, public sewer or drain in connection with the construction and maintenance of the Authorised Development with the approval of the owner of the watercourse, public sewer or drain and subject to certain other conditions, and its purpose is to establish a clear statutory authority for doing so. The reference from the model provisions to section 85 of the Water Resources Act 1991 has been deleted as this section has now been repealed. This has been replaced with a reference to the Environmental Permitting (England and Wales) Regulations 2016. The reference from the model provisions to the Homes and Communities Agency has been changed to Homes England, as this body replaced the Homes and Communities Agency in January 2018. References to the harbour authority have also been removed as they are not relevant to the Order. In relation to a drainage authority, these provisions are disapplied as sufficiently detailed provision will be made by the relevant protective provisions (see Part 3 of Schedule 15 (protective provisions)). These amendments align with the drafting of the equivalent article in the **Cottam Solar Project Order 2024** and the **Gate Burton Energy Park Order 2024.**
- 4.4.2. Article 19 (*Protective work to buildings*) is a model provision which is included in most made DCOs to date. Its purpose is to provide powers to the undertaker to enter any building and land within its curtilage to survey to determine whether protective works are needed and to carry out protective works to buildings within the Order Limits, subject to a number of conditions including the service of not less than 14 days' notice (except in cases of emergency) and the payment of compensation in the event that any loss or damage arises. Where the undertaker serves a notice stating the intention to carry out protective works or to enter a building or land within its curtilage there is ability for a counter notice to be served by the land owner/occupier within a period of 10 days from the day on which the notice was served.
- 4.4.3. Protective works can also be undertaken after the carrying out of the works forming part of the Authorised Development for a period of 5 years from the date of completion of the part of the Authorised Development carried out in vicinity of the building. This wording is a minor update from the model provision wording, as the undertaker considered that the phrase 'open for use' which is used in the model provision is not appropriate. This Article is required because there are buildings within, and in close proximity to, the Order Limits that might feasibly require surveys and protective works as a result of the Authorised Development.
- 4.4.4. The Article includes compensation provisions in relation to the consequences of the protective works being undertaken, but also where the protective works are

undertaken but they are inadequate to protect the building or land from damage (within a period of 5 years from the date of final commissioning).

4.4.5. Article 20 (*Authority to survey and investigate the land*) is a model provision that enables the undertaker to enter onto any land within the Order Limits or which may be affected by the Authorised Development for the purpose of carrying out monitoring or surveys, including bringing equipment onto the land and making trial holes. The Applicant has included specific reference to “pull out tests”, which are tests undertaken in connection with solar farms as part of ground investigation tests, to prove the driveability of the piles and required depth of foundation posts. The power is subject to a number of conditions, including a requirement of at least 14 days' notice on every owner and occupier of the land and the payment of compensation in the event that any loss or damage arises. This power is essential to implementation of the Authorised Development, for example in verifying ground conditions or the presence of statutory undertakers' apparatus.

4.4.6. The model provision has been modified so that no trial holes are to be made:

- in land located within the highway boundary without the consent of the highway authority; or
- in a private street without the consent of the street authority.

4.4.7. The Article applies section 13 of the Compulsory Purchase Act 1965 (refusal to give possession to acquiring authority) thereby providing an enforcement mechanism (by way of a warrant) where entry onto land under the Article is refused. This is considered necessary so that there is no delay in the implementation of the Authorised Development and has precedent in the **Longfield Solar Farm Order 2023**, the **Cottam Solar Project Order 2024** and the **Gate Burton Energy Park Order 2024**.

4.4.8. Article 21 (*Removal of human remains*) is a model provision which provides for the removal of human remains from the Order Limits and for their reburial in such burial ground or cemetery in which burials may legally take place as the undertaker thinks suitable for the purpose or for their treatment according to the wishes of any personal representatives or relatives who come forward following the giving of the necessary notices. This Article has been included because there is a risk of human remains associated with the World War II crash sites within the Order Limits identified by the undertaker in the course of its archaeological investigations, and therefore the undertaker is not able to rule out the presence of human remains within the Order Limits. This provision is considered necessary so that the discovery of any remains does not delay the implementation of the Authorised Development.

4.5. Part 5 (Powers of Acquisition)

4.5.1. Article 22 (*Compulsory acquisition of land*) is a model provision that provides for the compulsory acquisition of such land as is required for the Authorised

Development, or to facilitate, or is incidental to, the Authorised Development. The Article is necessary to secure the delivery of the Authorised Development as set out in more detail in the **Statement of Reasons [EN010149/APP/4.1]** accompanying the Application. The Article broadly follows the model provision, although reference to compensation for the extinguishment or suspension of a private right of way has been deleted as this is dealt with in Article 25 (Private rights). Similarly, Article 24 (Compulsory acquisition of rights) makes the consequential provision for the extinguishment of rights over the land to ensure that they cannot impact on implementation or use of the Authorised Development. This approach has precedent in the **Riverside Energy Park Order 2020**, the **Lake Lothing (Lowestoft) Third Crossing Order 2020**, the **Cottam Solar Project Order 2024** and the **Gate Burton Energy Park Order 2024**.

- 4.5.2. Article 22(2) makes clear that the powers in this Article are subject to the powers and restrictions in paragraph 2 of Article 24 (Compulsory acquisition of rights) and Article 31 (Temporary use of land for constructing the authorised development) to ensure that, where relevant, the undertaker can only acquire new rights or take temporary possession of land and cannot acquire the freehold interest in that land. Article 22 is also subject to a time limit as set out in Article 23 (Time limit for exercise of authority to possess land temporarily or to acquire land compulsorily).
- 4.5.3. Article 23 (*Time limit for exercise of authority to possess land temporarily or to acquire land compulsorily*) is a provision which imposes a time limit of 5 years for the exercise of powers of compulsory acquisition from the date on which the Order is made, via issuing notices to treat or executing general vesting declarations. Paragraphs (3) and (4) allow for the undertaker to use the land for a longer period for the authority conferred under Article 31 (Temporary use of land for constructing the authorised development) in the case that the DCO is granted and there is then an application made under section 118 of the Planning Act 2008 (Legal challenges relating to applications for orders granting development consent). The undertaker considers that 5 years is an appropriate time limit as it is consistent with the time limit for commencing the Authorised Development set out in Requirement 2 of Schedule 2 to the Order and has precedent in the majority of made DCOs to date.
- 4.5.4. Article 24 (*Compulsory acquisition of rights*) enables the undertaker to acquire rights or impose restrictive covenants over the Order Land as may be required for any purpose for which the land may be acquired under Article 22 (Compulsory acquisition of land). The Article also provides that rights may be created as well as enabling the undertaker to acquire those already in existence. It should be noted that this provision is subject to Article 31 (Temporary use of land for constructing the authorised development) which provides that the undertaker must not acquire, acquire new rights over or impose restrictive covenants over land listed in Schedule 11 to the Order (i.e. Land of which temporary possession may be taken).

- 4.5.5. The Article provides that, in respect of the Order Land set out in Schedule 9 (Land in which only new rights etc. may be acquired) the undertaker's powers of acquisition of new rights and imposition of restrictive covenants are limited to the purposes set out in that Schedule. The ability to acquire new rights and impose restrictive covenants is required in order that the undertaker can construct and maintain the Authorised Development, and it ensures that the undertaker is able to seek a lesser interference with land where this is appropriate (whether in the context of new or existing rights) during the implementation of the Authorised Development. Providing the undertaker with powers to acquire rights only and impose restrictive covenants only over the Order Land set out in Schedule 10 (Modification of compensation and compulsory purchase enactments for the creation of new rights and imposition of new restrictive covenants) allows the undertaker to reduce the area of land that is required to be compulsorily acquired for the purposes of the Authorised Development, and therefore allows for a more proportionate exercise of compulsory acquisition powers.
- 4.5.6. Paragraphs (5) and (6) provide that where the undertaker proposes the acquisition of new rights or the imposition of restrictive covenant for the purpose of diverting, replacing or protecting the apparatus of a statutory undertaker, the undertaker may, with the consent of the Secretary of State transfer the powers to the relevant statutory undertaker.
- 4.5.7. This form of drafting originates from Article 19 of the model provisions, which grants broad powers of acquisition which are then subject to subsequent articles to limit that broad power. It is standard and well precedented drafting including in the **Cleve Hill Solar Farm Order 2020**, the **Longfield Solar Farm Order 2023**, the **Gate Burton Energy Park Order 2024** and the **Cottam Solar Project Order 2024**.
- 4.5.8. Article 25 (*Private rights*) is a model provision that (i) extinguishes private rights and restrictions over land so far as their continuance would be inconsistent with the exercise of the compulsory acquisition powers contained in Article 22 (Compulsory acquisition of land); (ii) provides that private rights and restrictions over land cease to have effect in so far as their continuance would be inconsistent with the exercise of compulsory acquisition of rights or the imposition of restrictive covenants under Article 24 (Compulsory acquisition of rights); and (iii) suspends private rights and restrictions over land so far as their continuance would be inconsistent with the exercise of temporary possession powers under the Order. This is required because it enables the undertaker to take land with a clear, unencumbered title, thereby minimising impediments to the delivery of the Authorised Development.
- 4.5.9. The Applicant has adopted the text as included by the Secretary of State in respect of the **Longfield Solar Farm Order 2023**, the **Gate Burton Energy Park Order 2024** and the **Cottam Solar Project Order 2024**.
- 4.5.10. Paragraph (4) provides that compensation is payable to any person who suffers loss as a result of the exercise of the powers in this Article and that such

compensation would be payable under section 152 of the 2008 Act rather than the Compulsory Purchase Act 1965. Paragraph (8) also clarifies that references to private land include references to any trusts or incidents to which the land is subject.

- 4.5.11. Article 26 (*Application of the 1981 Act*) is a model provision which applies the general vesting procedures in the Compulsory Purchase (Vesting Declarations) Act 1981 to the exercise of compulsory acquisition powers pursuant to the Order. This provides the undertaker with the option to acquire the land via the vesting process set out in the 1981 Act rather than the notice to treat procedure. Vesting declarations allow title in the land concerned to pass to the acquiring authority more quickly than using the notice to treat method. They also enable several parcels of land to be acquired under the same legal instrument and therefore more efficiently than under the notice to treat procedure.
- 4.5.12. This Article has been amended from the model provision to incorporate and reflect the changes brought about by the Housing and Planning Act 2016 which has precedent in numerous DCOs including the **Cleve Hill Solar Farm Order 2020**, the **Longfield Solar Farm Order 2023** the **Gate Burton Energy Park Order 2024** and the **Cottam Solar Project Order 2024**.
- 4.5.13. Article 27 (*Acquisition of subsoil only*) is a model provision that permits the undertaker to acquire only the subsoil of land which is to be compulsorily acquired (pursuant to Article 22 – Compulsory acquisition of land), thereby giving the undertaker the ability to minimise the extent of interests acquired from landowners. This Article is appropriate in the context of the cables or pipes to be laid underground as part of the Authorised Development, where acquisition of the 'entire' freehold may not be required. It therefore enables the undertaker to minimise as far as possible to extent of interests to be acquired, thereby reducing the impact on landowners.
- 4.5.14. Article 28 (*Power to override easements and other rights*) provides that in carrying out or using the development authorised by the Order and doing anything else authorised by the Order, the undertaker may interfere with any easement, liberty, privilege, right or advantage annexed to land and affecting other land, including any natural right to support, or breach any restriction as to use of land arising by virtue of contract. It also provides that compensation may be payable under section 7 or 10 of the Compulsory Purchase Act 1965 for any such interference or breach. This is not a model provision, but is added to clarify the position with regard to rights burdening land required for the Authorised Development. It has precedent, for example, in the **Longfield Solar Farm Order 2023**, the **Gate Burton Energy Park Order 2024** and the **Cottam Solar Project Order 2024**.
- 4.5.15. Article 29 (*Modification of Part 1 of the Compulsory Purchase Act 1965*) modifies the provisions of Part 1 of the Compulsory Purchase Act 1965 as applied to the Order by section 125 of the 2008 Act. This provision reflects changes introduced by the Housing and Planning Act 2016 and is required to ensure that Part 1 of the 1965 Act is applied correctly to compulsory acquisition

authorised under the Order. Paragraphs (2) to (4) amend the provisions of the Compulsory Purchase Act 1965 so they are consistent with the terms of the Order. These modifications have precedent in numerous made DCOs and other legislation including the **Longfield Solar Farm Order 2023**, the **Sunnica Energy Farm Order 2024** and the **Cottam Solar Project Order 2024**.

- 4.5.16. Article 30 (*Rights under or over streets*) is a model provision which has been included in the majority of made DCOs to date to enable the undertaker to enter on and appropriate interests within streets where required for the purpose of the Authorised Development without being required to acquire that land. It is therefore required in order to reduce the amount of land that needs to be compulsorily acquired for the purposes of the Authorised Development.
- 4.5.17. The purpose of this Article is to allow the undertaker to appropriate and use land above or below streets within the Order Land, without having to acquire the street or any right or easement in it. The exercise of this power without acquisition is prohibited in the circumstances set out in paragraph (3). Paragraphs (4) and (5) provide for the payment of compensation in certain circumstances.
- 4.5.18. Article 31 (*Temporary use of land for constructing the authorised development*) allows the land specified in Schedule 11 (Land of which temporary possession may be taken) to be temporarily used for the carrying out of the Authorised Development. There is a clear limit on the length of time that the undertaker can use land in this way, which in the case of land that may only be used temporarily is the end of the period of one year beginning with the date of final commissioning of that part of the Authorised Development for which temporary possession of the land was taken. The Article also requires the undertaker to give 28 days' notice before taking possession, and to restore the land following the temporary works.
- 4.5.19. Wording has been added to paragraph (1)(a)(ii) in order to allow Article 31 to apply to land which may later be the subject of compulsory acquisition. This reflects a common approach to designing and building infrastructure projects, whereby possession is taken of a wider area required for the purposes of construction, and once the location of new apparatus is known definitively (after it has been built), then the final area of land required permanently is defined and acquired. This allows a more proportionate approach to the extent of land acquisition.
- 4.5.20. Wording has also been added to paragraphs (4) and (5) to take into account that the undertaker may, pursuant to Article 31(1)(a)(ii), temporarily use land that it may compulsorily acquire. This is also subject to a general requirement for the undertaker to not remain in possession of land for longer than a one year, beginning with the date of final commissioning of the Authorised Development.
- 4.5.21. Paragraph (10) makes clear that the undertaker cannot compulsorily acquire, nor permanently acquire rights or impose restrictive covenants over, the land

- specified in Article 31(1)(a)(i) (which is land of which temporary possession only is required).
- 4.5.22. Wording has been added at paragraph (11) to make clear that the Article does not preclude the creation or acquisition of new rights, imposition of restrictions or acquisition of rights in land specified in Schedule 9 (land in which only new rights etc. may be acquired), and nor are the powers under Article 27 (Acquisition of subsoil only) or Article 30 (Rights under or over streets) precluded.
- 4.5.23. The additional wording added above to the Article has precedent in the **Longfield Solar Farm Order 2023**, the **Gate Burton Energy Park Order 2024** and the **Cottam Solar Project Order 2024**.
- 4.5.24. Article 32 (*Temporary use of land for maintaining the authorised development*) provides for the temporary use of land for maintenance of the Authorised Development. There are clear limits on the length of time that the undertaker can use land in this way, provisions requiring not less than 28 days' notice to be given and restoration of the land following the temporary possession. This Article is broadly based on the model provision and provides for the payment of compensation for that temporary use of the land.
- 4.5.25. The maintenance period has been adapted from the model provision to apply to the period 5 years beginning with the date of final commissioning as opposed to the date on which the project is opened for use as this is more appropriate for this type of development. Similar wording has been used in other made Orders in connection with solar generating stations such as the **Longfield Solar Farm Order 2023**, the **Gate Burton Energy Park Order 2024** and the **Cottam Solar Project Order 2024**. However, in order to be able to carry out the landscaping commitments set out in the **Outline Landscape and Ecology Management Plan [EN010149/APP/7.9]**, the maintenance period has been extended to the period in the landscape and ecology management plan approved pursuant to Requirement 8. A similar provision was included in the **Longfield Solar Farm Order 2023**, the **Gate Burton Energy Park Order 2024** and the **Cottam Solar Project Order 2024**.
- 4.5.26. Article 33 (*Statutory undertakers*) provides for the acquisition of land belonging to statutory undertakers within the Order Land. This includes a power to move the apparatus of those statutory undertakers and to extinguish their rights. This article is subject to the protective provisions (refer to Article 44 in **Paragraph 4.6.20** of this document) included at Schedule 15 of the Order. Further details on statutory undertakers' land and apparatus are included in the **Statement of Reasons [EN010149/APP/4.1]**. This power is required over the whole of the Order Land and similar wording has been used in other made Orders including the **Cleve Hill Solar Park Order 2020**, the **Longfield Solar Farm Order 2023**, the **Gate Burton Energy Park Order 2024** and the **Cottam Solar Project Order 2024**.

4.5.27. Article 34 (*Apparatus and rights of statutory undertakers in closed or restricted streets*) governs what happens to statutory utilities' apparatus (pipes, cables, etc.) under streets that are closed by the Order. This Article is required because, without it, the statutory undertaker would not have access to the apparatus, since there would no longer be a right of way along the street. The Article is a model provision but has been amended in that paragraphs (2) onwards have been deleted from the model provision to avoid duplication with the protective provisions contained in Schedule 15.

4.5.28. Article 35 (*Recovery of costs of new connections*) provides that persons who have to create a new connection following the exercise of powers under Article 33 (Statutory undertakers) may recover the costs of new connections from the undertaker. It is a model provision, with the part of the model provision that referred to the permanent stopping up of streets deleted as this is not relevant in the context of the Authorised Development.

4.6. Part 6 (Miscellaneous and General)

4.6.1. Article 36 (*Benefit of the Order*) overrides section 156(1) of the 2008 Act (which is permitted by section 156(2)) and provides that the benefit of the Order is for the undertaker, rather than anyone with an interest in the land. Given the nature of the Authorised Development and the fact that powers of compulsory acquisition are sought, it would be impracticable and inappropriate for the Order to be 'open' as to who may implement it, as might occur without this provision. Overriding section 156(1) is common in DCOs that have been made, including the **Little Crow Solar Park Order 2022**, the **Longfield Solar Farm Order 2023** and the **Cottam Solar Project Order 2024**.

4.6.2. Article 36 makes specific provision in respect of which the provisions of the Order are for the benefit of the undertaker and National Grid for the grid connection works. This is to allow the flexibility for either the undertaker and/or National Grid to undertake works relating to the connection into the National Grid Navenby Substation.

4.6.3. Article 37 (*Consent to transfer the benefit of the Order*) is a standard article included in numerous made DCOs that makes provision for the transfer of any or all of the benefit of the provision of the Order. This Article is required in order that the undertaker has commercial flexibility to transfer the benefit of the Order to a third party, subject to the provisions of the Article. Under paragraph (3), the consent of the Secretary of State is needed before the undertaker can transfer or lease the Order except where:

- the transferee or lessee is National Grid Electricity Transmission Plc;
- the transferee or lessee is the holder of an electricity generating licence under section 6 of the Electricity Act 1989; or
- the compensation provisions for the acquisition of rights or interests in land or for effects on land have been discharged or are no longer relevant.

- 4.6.4. Article 37(2) has been amended from the model provisions so that it refers to 'transfer or grant', which is considered to be more accurate than 'agreement'.
- 4.6.5. The justification for these provisions is that in such cases, the transferee or lessee will either be of a similar regulatory standing to the undertaker so as to protect the provision for compensation for rights or interests in land that are compulsorily acquired pursuant to the Order, or there are no outstanding actual or potential compulsory purchase claims. Article 37(4) provides that where the consent of the Secretary of State is not needed, the undertaker must still notify the Secretary of State, the Relevant Planning Authorities, in writing prior to the transfer or grant of the benefit of the provisions of the Order. Article 37(5) to (7) provide further detail on the notification that is to be given. This is based on the notification procedure contained in Article 7 of the **Wrexham Gas Fired Generating Station Order 2017** and similar provisions can be found in the **Cottam Solar Project Order 2024**, the **Gate Burton Energy Park Order 2024** and the **Mallard Pass Solar Farm Order 2024**.
- 4.6.6. Article 37(8) provides that where the undertaker has transferred the benefit of the Order or granted the benefit of the Order then:
- the transferred benefit will include any rights that are conferred and any obligations that are imposed;
 - the transferred benefit will reside exclusively with the transferee or the lessee and shall not be enforceable against the undertaker;
 - the benefits or rights conferred under paragraph (1) of the article are subject to the same restrictions, liabilities and obligations as applies to the undertaker.
- 4.6.7. This approach has precedent in the **Cleve Hill Solar Park Order 2020** and the **Longfield Solar Farm Order 2023**, as well as the **Gate Burton Energy Park Order 2024** and the **Cottam Solar Project Order 2024**.
- 4.6.8. Article 38 (*Application of landlord and tenant law*) is a model provision which is included in numerous made DCOs which would override landlord and tenant law so far as it would prejudice the operation of any agreement for leasing the whole of the Authorised Development or the right to operate the same or any agreement entered into by the undertaker for the construction, maintenance, use or operation of the Authorised Development. This provision is required to ensure that landlord and tenant law does not impede the construction, use or maintenance of the Authorised Development. Although there is no immediate anticipation that such an agreement would be made, it could become appropriate at a future time during the lifetime of the Authorised Development.
- 4.6.9. Article 39 (*Operational land for purposes of the 1990 Act*) is a model provision which is included in numerous made DCOs and has the effect of ensuring that the land on which the Authorised Development is constructed will be "operational land" under section 264(3)(a) of the 1990 Act. The effect is to ensure that planning rights attaching to the undertaker in relation to operational

land have effect as they would do if planning permission had been granted for the Authorised Development.

- 4.6.10. Article 40 (*Felling or lopping of trees and removal of hedgerows*) is based on a model provision included in numerous made DCOs which provides that the undertaker may fell or lop or cut back the roots of any tree or shrub within or overhanging the Authorised Development to prevent it obstructing or interfering with the construction, maintenance or operation of the Authorised Development; constituting a danger for persons using the Authorised Development or obstructing or interfering with the passage of construction vehicles.
- 4.6.11. The Article also allows the undertaker to remove those hedgerows specified in Schedule 12 (Hedgerows to be removed) to the maximum extents shown on the **Important Hedgerow Survey and Areas Proposed for Vegetation Removal [EN010149/APP/6.2]**. Schedule 12 is divided into Part 1 (Removal of hedgerows) and Part 2 (Removal of important hedgerows). There is one hedgerow identified as 'partially important' labelled as reference R27 in the **Vegetation Removal Parameters Plan [EN010149/APP/6.2]**. It is identified in the **Vegetation Removal Parameters Plan [EN010149/APP/6.2]** at Figure 3.11D with blue and orange shading. For the purposes of powers sought under the DCO, the Applicant has taken a conservative approach and considered this as 'important' hedgerow. It is therefore included in Part 2 of Schedule 12. Article 40(4) clarifies that the power is to remove hedgerows specified in Schedule 12, to the extent set out in the Landscape and Ecology Management Plan approved pursuant to Requirement 8 in Schedule 2.
- 4.6.12. The Article provides that the undertaker may not fell or lop a tree or remove hedgerows under this Article within the extent of the publicly maintainable highway without the prior consent of the highway authority. Compensation is provided for if loss or damage is caused. The provision is required for safety reasons and its applicability is appropriately limited.
- 4.6.13. Article 40 does not address the statutory protection afforded to trees by virtue of being subject to a Tree Preservation Order ("TPO").
- 4.6.14. Article 41 (*Trees subject to tree preservation orders*) provides that the undertaker may fell or lop or cut back the roots of any tree which is subject to a TPO to prevent it obstructing or interfering with the construction, maintenance, operation or decommissioning of the Authorised Development. Compensation is provided for if loss or damage is caused. The effect of the Article is that the works it permits, where carried out to a tree protected by a TPO, are deemed to have consent, and its inclusion is therefore consistent with the purpose of DCOs being to wrap up all of the required consents for a project. The Article is a model provision included in numerous made DCOs and has been amended, to reflect that no TPOs exist at the present time, but to apply to a TPO made after the submission of the Application and either within or overhanging the Order Limits. This approach is based on similar drafting in the **Cleve Hill Solar Park Order 2020** and **Cottam Solar Project Order 2024**.

- 4.6.15. Article 42 (*Certification of plans and documents, etc.*) is a model provision which provides for the undertaker to submit various documents referred to in the Order (such as the **Book of Reference [EN010149/APP/4.3]**, plans and **ES [EN010149/APP/6.1]**) to the Secretary of State so that they can be certified as being true copies. The Article refers to Schedule 13 (Documents and plans to be certified), where all such documents and plans are listed, along with the appropriate document and revision numbers. The Article and Schedule 13 provide certainty as to which documents will be certified by the Secretary of State in relation to the Order.
- 4.6.16. Article 43 (*Arbitration*) is an arbitration provision and it is a departure from the model provision. This drafting, and that in the associated Schedule 14 (Arbitration rules), has precedent in the **Cleve Hill Solar Park Order 2020** and the **Mallard Pass Solar Farm Order 2024** amongst others. It is considered that this approach will provide greater certainty to all parties involved in the process and is preferential to the approach adopted in the model provisions.
- 4.6.17. The Article provides that differences under the Order should be settled by arbitration unless another means of resolving a dispute is provided for in the Order. The arbitrator will be appointed by the parties within 14 days of receipt of a notice of arbitration or failing agreement within this period then by the Secretary of State following application by one of the parties.
- 4.6.18. It applies Schedule 14 (Arbitration rules) to the Order, which sets out further detail of the arbitration process. The detail of Schedule 14 is set out at **Section 5.14** of this document.
- 4.6.19. In addition, Article 43(2) provides that any matter for which the consent or approval of the Secretary of State is required under the Order is not subject to arbitration.
- 4.6.20. Article 44 (*Protective Provisions*) provides for Schedule 15 (Protective provisions), which protects the interests of certain statutory undertakers, to have effect. This is set out in detail at **Section 5.15** of this document. This is a model provision.
- 4.6.21. Article 45 (*Service of notices*) governs how any notices that may be served under the provisions of the Order are deemed to have been served properly. In particular it allows service by email with the consent of the recipient, and deals with the situation of service on an unknown landowner. The provision is necessary because the service of notice provisions under sections 229 and 230 of the 2008 Act only apply to notices served under the 2008 Act itself and do not apply to notices served under the Order. These provisions are based on those appearing in the **Transport and Works (Model Provisions for Railways and Tramways) Order 2006**, and numerous made DCOs.
- 4.6.22. Article 46 (*Procedure in relation to certain approvals etc.*) provides procedures in relation to consents and approvals required pursuant to the Order (other than Requirements). Applications for consent submitted by the undertaker will be

deemed to be granted if notice is not given of their refusal by the consenting authority within ten weeks of the submission of the application (unless a longer period has been agreed between the parties). Where these provisions apply to an application, the undertaker is required to notify the consenting authority of the effect of the provisions when it submits the relevant application. The consenting authority must not unreasonably withhold or delay consent where an application has been submitted by the undertaker pursuant to this Article.

- 4.6.23. For any consent, agreement, or refusal pursuant to the Requirements a detailed procedure is provided for in Schedule 16 (Procedure for discharge of requirements) (refer to **Paragraph 5.16** of this document).
- 4.6.24. This Article has precedent in the **Longfield Solar Farm Order 2023**, the **Gate Burton Energy Park Order 2024** and the **Mallard Pass Solar Farm Order 2024** and is considered appropriate and justified in order to ensure that the Authorised Development can proceed in a reasonable timescale, and so that there is a consistent approach to consents that must be sought by the undertaker pursuant to the Order.
- 4.6.25. Article 47 (*Guarantees in respect of payment of compensation*) restricts the undertaker from exercising the powers conferred under Articles 22, 24, 25, 30, 31, 32 and 33 until it has either put in place a guarantee or other form of security approved by the Secretary of State in respect of the liabilities of the undertaker to pay compensation under the Order. This provision is included in order to protect the recipients of any compensation under the Order by providing certainty that the undertaker can make good any compensation owed. The guarantee or alternative form of security is not required to be in place for more than 15 years from the date on which the relevant power is exercised. The wording appears in a number of made DCOs, for example the **Longfield Solar Farm Order 2023** and the **Mallard Pass Solar Farm Order 2024**.
- 4.6.26. Article 48 (*Compulsory acquisition of land - incorporation of the mineral code*) is a model provision which incorporates Parts 2 and 3 of Schedule 2 of the Acquisition of Land Act 1981 (minerals). The mineral code is incorporated as a precautionary measure given the identification of interests in mines and minerals within the Order Limits, and that the Order Limits is located within Mineral Consultation and Safeguarding Areas. The incorporation of the mineral code means that when the undertaker compulsorily acquires land under the Order, it does not also acquire the rights to mine minerals.
- 4.6.27. Article 49 (*Crown rights*) includes provisions safeguarding the rights of the Crown in relation to the Crown Estate land within the Order limits. This Article is not a model provision but has precedent in numerous DCOs including in Article 44 of **The Sunnica Energy Farm Order 2024**. The intention of the Article is to protect the Crown in respect of its land and interests, both when it holds the land or where it is held by another person (such as a government department).
- 4.6.28. Article 50 (*No double recovery*) is not a model provision and is based on Article 44 of the model clauses for railway contained in schedule 1 to the **Transport**

and Works (Model Clauses for Railways and Tramways) Order 2006. This article has precedent in numerous Transport and Works Act Orders. It provides that compensation is not payable both under the Order and any other enactment, contract or other rule of law. It follows that well established principle of equivalence that a claimant is compensated for no more and no less than their loss.

5. Schedules

5.1. Schedule 1 (Authorised Development)

- 5.1.1. This Schedule describes the Authorised Development in detail and split into different work numbers. Each of these work numbers represents a different part of the Authorised Development. This split of the Authorised Development between different work numbers is designed to enable the Order to refer to different parts of the Authorised Development by citing the relevant work number. Paragraph 1 of the Schedule sets out a number of definitions that are used only within the Schedule and are not in other places in the Order.
- 5.1.2. The works set out in Schedule 1 to the Order are explained in detail in this document in **Section 1.4**.
- 5.1.3. The mechanics of the drafting in Schedules 1 and 2 ensure that the undertaker does not exceed the basis of the assessment in the **ES [EN010149/APP/6.1]**. This is achieved through the following mechanisms in the Order.
- 5.1.4. Article 3 and Schedule 1 provide the power to carry out the Authorised Development. Pursuant to Article 3(2) each numbered work must be situated within the area delineated on the **Works Plans [EN010149/APP/2.3]** – thus the infrastructure can only be built within these areas. Given these overarching constraints, there is certainty as to where each element identified in Schedule 1 can be built, and that has been factored into the **ES [EN010149/APP/6.1]**.
- 5.1.5. Schedule 1 provides that development which does not form part of a specific work number can only be brought forward if it does not lead to materially new or materially different effects from those assessed in the **ES [EN010149/APP/6.1]**.
- 5.1.6. In respect of the detailed design, Requirement 5 of Schedule 2 (refer to **Paragraph 5.2.11** of this document) prevents the undertaker from commencing any part of Work Nos. 1 to 6 and 9 until it has obtained the approval of the relevant planning authority to the layout, scale, proposed finished ground levels, external appearance, vehicular and pedestrian access, parking and circulation areas, refuse or other storage units, signs and lighting.
- 5.1.7. Requirement 5 requires that the details submitted must accord with the **Design Commitments [EN010149/APP/7.4]** and the **ES Volume 3, Appendix 3.1: Project Parameters [EN010149/APP/6.3]** as well as any details approved under other relevant requirements. Both the **Design Commitments [EN010149/APP/7.4]** and the **ES Volume 3, Appendix 3.1: Project Parameters [EN010149/APP/6.3]** are certified documents pursuant to Article 42 (Certification of plans and documents) and Schedule 13 (Documents and plans to be certified etc.). The **ES Volume 3, Appendix 3.1: Project Parameters [EN010149/APP/6.3]** contains the maximum Parameters for the Authorised Development and are the same as those used for the assessment of effects in the **ES [EN010149/APP/6.1]**. These Parameters are based on the

application of the Rochdale Envelope principle, such that maximum dimensions have been presented and assessed in the **ES [EN010149/APP/6.1]**, recognising that the final features may differ from (but will never be larger than) these maxima.

- 5.1.8. The combined effect of, and relationship between, these provisions means that the final built form of the Authorised Development will not give rise to environmental effects beyond those which have been assessed. This approach, and what we have called the "consent envelope" is explained further in section 1.6 of this document.

5.2. Schedule 2 (Requirements)

- 5.2.1. This Schedule sets out the requirements that apply to the construction, operation, maintenance and decommissioning of the Authorised Development under the Order. The requirements generally follow the model provisions where these are relevant, and where they have been amended this has been informed by the outcomes of the Environmental Impact Assessment and any discussions with the relevant planning authority or other relevant statutory consultee.
- 5.2.2. The requirements closely relate to the mitigation set out in the **ES [EN010149/APP/6.1]** and a number of them specifically refer to the **ES [EN010149/APP/6.1]** and other Application documents (in particular, 'outline' strategies or plans) in order to ensure that the mitigation or other measures outlined in those documents are secured.
- 5.2.3. Many of the requirements require submission of details for approval by the relevant planning authority. In some instances, the relevant planning authority is under a duty to consult with a third party or parties in relation to the document submitted to them. This is a departure from the model provisions. Where consultation is required under the Order it is, in each case, the relevant planning authority's duty to carry it out before approving a document submitted to it (rather than, as in some of the model provisions, the undertaker's duty to carry it out before submitting the document for approval). Where it is considered that it would be particularly relevant for the relevant planning authority to consult a third party, that third party has been named within the relevant requirement.
- 5.2.4. In the undertaker's opinion the requirements in Schedule 2 are all necessary and relevant to planning and the development to be permitted as they are outputs from the **ES [EN010149/APP/6.1]**; enforceable and precise in their language; and reasonable in all other respects.
- 5.2.5. In all cases where a scheme or strategy or plan is to be submitted for approval there is a requirement for the undertaker to implement the approved scheme or strategy or plan as approved and maintain the plan through the operation of the relevant part of the Authorised Development. This wording to ensure ongoing maintenance has been incorporated from the made **Gate Burton Energy Park Order 2024** and **Cottam Solar Project Order 2024**. This is subject to Requirement 4, as explained in **Paragraph 5.2.10** of this document.

- 5.2.6. Where relevant and appropriate, certain requirements can be discharged in part, which is facilitated by the wording restricting “part” of the Authorised Development from proceeding until the relevant details have been submitted and approved in respect of that part. The “parts” are not pre-defined and this approach is designed to ensure necessary flexibility for different aspects of the Authorised Development to proceed as and when appropriate in the overall development schedule following detailed design. The approach and drafting is preceded in recently-made DCOs such as the **Longfield Solar Farm Order 2023**, the **Gate Burton Energy Park Order 2024** and the **Cottam Solar Project Order 2024**.
- 5.2.7. **Requirement 1 – Interpretation.** This provides a definition in relation to “relevant planning authority”, applicable to this Schedule only, rather than the Order as a whole. The definition has been changed to mean North Kesteven District Council except for specific requirements where it is Lincolnshire County Council. This is the subject of ongoing discussion with the two authorities and may change in further revisions to the draft Order.
- 5.2.8. **Requirement 2 – Commencement of the Authorised Development.** This requirement provides that the Authorised Development must not commence later than 5 years from the date of the Order coming into force.
- 5.2.9. **Requirement 3 – Phasing of the Authorised Development and date of final commissioning.** This requirement provides that no part of the Authorised Development may commence until a written scheme setting out the phases of construction of the Authorised Development has been submitted to and approved by the relevant planning authority. The scheme must be implemented as approved. Notice of the date of final commissioning with respect to each phase of numbered work 1 to must be given the relevant planning authority within 15 working days of the date of final commissioning for that phase.
- 5.2.10. **Requirement 4 – Requirement for written approval.** This requirement provides that where any documents have been certified under Article 42 (Certification of plans and documents, etc.) and where any plans, details or schemes have been approved by the relevant planning authority, the undertaker may submit for approval any amendments to those documents, plans, details or schemes and, if approved by the relevant planning authority, those documents, plans, details or schemes are to be taken to include the amendments approved by the relevant planning authority. Any amendments should not be approved unless it has been demonstrated that that the subject matter of the approval sought is unlikely to give rise to any materially new or materially different environmental effects from those assessed in the **ES [EN010149/APP/6.1]**.
- 5.2.11. **Requirement 5 – Detailed design approval.** This requirement stipulates that no part of Work Nos. 1 to 6 and 9 may commence until details relating to that part have been submitted to and approved by the relevant planning authority. The details submitted must be in accordance with the **Design Commitments [EN010149/APP/7.4]**, the **ES Volume 3, Appendix 3.1: Project Parameters [EN010149/APP/6.3]** and any details approved under Requirements 7 (battery

safety management), 8 (landscape and ecology management plan), 9 (fencing and other means of enclosure), 10 (surface and foul water drainage), 11 (archaeology), 15 (operational noise) and 17 (public right of way and permissive path management plan). The Authorised Development must be carried out in accordance with the approved details.

- 5.2.12. **Requirement 6 – Community liaison group.** This requirement provides that the undertaker must establish a community liaison group prior to commencement of the Authorised Development, in order to facilitate liaison between representatives of people living in the vicinity of the Order limits, and other relevant organisations in relation to the construction of the Authorised Development.
- 5.2.13. **Requirement 7- Battery safety management.** This requirement stipulates that Work No. 4 must not commence until a battery safety management plan has been approved by the relevant planning authority (substantially in accordance with the **Outline Battery Safety Management Plan [EN010149/APP/7.14]**). The relevant planning authority must consult with Lincolnshire Fire and Rescue Service and the Environment Agency before approving the battery safety management plan. The battery safety management plan must be implemented as approved.
- 5.2.14. **Requirement 8 – Landscape and ecology management plan.** This requirement stipulates that no part of the Authorised Development may commence until a written landscape and ecology management plan (substantially in accordance with the **Outline Landscape and Ecology Management Plan [EN010149/APP/7.9]**) has been submitted to and approved by the relevant planning authority, in consultation with Lincolnshire County Council, the Environment Agency and Natural England. The landscape and ecology management plan must include details of how the plan proposals will contribute to the achievement of a minimum 10% biodiversity net gain in habitat units and hedgerow units for all of the Authorised Development during the operation of the Authorised Development and the metric that has been used to calculate the biodiversity net gain. The landscape and ecology management plan must be implemented as approved and maintained throughout the operation of the Authorised Development.
- 5.2.15. **Requirement 9 – Fencing and other means of enclosure.** The undertaker is required to obtain approval from the relevant planning authority for any proposed temporary or permanent fences, walls or other means of enclosure, for each part in question. Permanent fencing must be completed before the date of final commissioning in respect of that part and maintained for the operational lifetime of the part of the Authorised Development
- 5.2.16. **Requirement 10 – Surface and foul water drainage.** This requirement stipulates that no part of the Authorised Development may commence until written details of the drainage strategy (to include, details of any foul water drainage) (substantially in accordance with the **Flood Risk Assessment, Appendix: Outline Drainage Strategy [EN010149/APP/7.16]**) has been

submitted to and approved by the relevant planning authority. The approved scheme must be implemented and maintained throughout the construction and operation of the Authorised Development.

- 5.2.17. **Requirement 11 – Archaeology.** This requirement stipulates that no part of Work Nos. 1 to 6 may commence until a written scheme of investigation (which must substantially accord with the **Outline Written Scheme of Investigation [EN010149/APP/7.15]**) has been submitted to and approved by the relevant planning authority, such approval to be in consultation with Lincolnshire County Council. Any archaeological works or watching brief must be carried out in accordance with the approved scheme.
- 5.2.18. **Requirement 12 – Construction environmental management plan.** Under this requirement, no part of the Authorised Development may commence until a construction environmental management plan (which must substantially accord with the **Outline Construction Environmental Management Plan [EN010149/APP/7.7]**) has been submitted to and approved by the relevant planning authority, such approval to be in consultation with Lincolnshire County Council and the Environment Agency. All construction works associated with the Authorised Development must be carried out in accordance with the approved construction environmental management plan, which must be implemented as approved.
- 5.2.19. **Requirement 13 – Operational environmental management plan.** Before the date of final commissioning of the Authorised Development, an operational environmental management plan (which must substantially accord with the **Outline Operational Environmental Management Plan [EN010149/APP/7.10]**) must be submitted to and approved by the relevant planning authority, in consultation with Lincolnshire County Council and the Environment Agency. The plan must be implemented and maintained as approved.
- 5.2.20. **Requirement 14 – Construction traffic management plan.** Under this requirement, no part of the Authorised Development may commence until a construction traffic management plan (which must substantially accord with the **Outline Construction Traffic Management Plan [EN010149/APP/7.8]**) has been submitted to and approved by the relevant planning authority, such approval to be in consultation with North Kesteven District Council. All construction works associated with the Authorised Development must be carried out in accordance with the approved construction traffic management plan.
- 5.2.21. **Requirement 15 – Operational noise.** This requirement stipulates that Work Nos. 1 to 4 may not commence until an operational noise assessment (containing details of how the design has incorporated mitigation to ensure the operational noise rating levels as set out in the **ES [EN010149/APP/6.1]**) has been submitted to and approved by the relevant planning authority. The design in the operational noise assessment must be implemented and maintained as approved.

- 5.2.22. **Requirement 16 – Employment, skills and supply chain.** This requirement stipulates that no part of the Authorised Development may commence until an employment, skills and supply chain plan (which must be substantially in accordance with the **Outline Employment, Skills and Supply Chain Plan [EN010149/APP/7.20]**) in relation to that phase has been submitted to and approved by the relevant planning authority, such approval to be in consultation with Lincolnshire County Council. The employment, skills and supply chain plan must identify opportunities for individuals and businesses to access employment and supply chain opportunities associated with that part of the Authorised Development to which the plan relates and the means for publicising such opportunities. The employment, skills and supply chain plan must be implemented and maintained as approved.
- 5.2.23. **Requirement 17 – Public right of way and permissive path management plan.** This requirement provides that the Authorised Development may not commence until details of the layout, alignment and specification of the public rights of way and permissive paths to be created or improved as part of the Authorised Development have been submitted to and approved by the relevant planning authority. The details of the public rights of way and permissive paths must accord with the **Streets, Rights of Way and Access Plans [EN010149/APP/2.4]** and the **Design Commitments [EN010149/APP/7.4]**. The public rights of way and permissive paths must be provided in accordance with the approved details.
- 5.2.24. Requirement 17 also stipulates that no part of the Authorised Development may commence until a public right of way and permissive path management plan (substantially in accordance with the **Outline Public Right of Way and Permissive Path Management Plan [EN010149/APP/7.12]**) has been submitted to and approved by the relevant planning authority. The public rights of way management plan must be implemented and maintained as approved. The requirement makes clear that nothing in the requirement prevents the undertaker from withdrawing the use of the permissive paths after the date of decommissioning in accordance with Requirement 19 (decommissioning and restoration).
- 5.2.25. **Requirement 18 – Soil management plan.** This requirement stipulates that no part of the Authorised Development may commence until a soil management plan (substantially in accordance with the **Outline Soil Management Plan [EN010149/APP/7.11]**) for that part has been submitted to and approved by the relevant planning authority. The soil management plan must be implemented as approved.
- 5.2.26. **Requirement 19 – Decommissioning and restoration.** This requirement provides that decommissioning must commence no later than 40 years following the date of final commissioning (although the drafting does allow for associated development, for example the Springwell Substation, to not be decommissioned until the final phase of Work No. 1 to which it relates is decommissioned. This is because some parts of the associated development

are required for more than one phase of the generating station, i.e. Work No. 1). No later than 12 months before the undertaker decides to decommission any part of the Authorised Development, the undertaker must notify the relevant planning authority of the intended decommissioning date. No later than ten weeks prior to the intended date of decommissioning the undertaker must submit to the relevant planning authority for its approval a decommissioning environmental management plan (substantially in accordance with the **Outline Decommissioning Environmental Management Plan [EN010149/APP/7.13]**). No decommissioning works can be carried out until the relevant planning authority has approved the decommissioning environmental management plan, in consultation with the Environment Agency and Natural England. The decommissioning environmental management plan must be implemented as approved.

5.3. [Schedule 3 \(Legislation to be disapplied\)](#)

5.3.1. This Schedule lists out the legislation that the Order disapplies that relates to railways, river navigation, fisheries and water in the vicinity of the Order Limits in so far as such legislation is in force and is incompatible with the powers contained within the Order.

5.4. [Schedule 4 \(Streets subject to street works\)](#)

5.4.1. This Schedule sets out the streets that are to be subject to street works by reference to the **Streets, Rights of Way and Access Plans [EN010149/APP/2.4]**. The Schedule relates to Article 8 (Street works).

5.5. [Schedule 5 \(Alteration of streets\)](#)

5.5.1. This Schedule sets out the streets that are to be permanently altered and then maintained by the highway authority or the street authority by reference to the **Streets, Rights of Way and Access Plans [EN010149/APP/2.4]**. This Schedule relates to Articles 10 (Power to alter layout, etc., of streets) and 12 (Construction and maintenance of new and altered streets).

5.6. [Schedule 6 \(Streets and public rights of way\)](#)

5.6.1. This Schedule sets out the locations of the public rights of way to be created or improved by the Order (Part 1), the streets to be temporarily closed or restricted (Part 2), the public rights of way to be temporarily closed or restricted (Part 3) and the public rights of way to be managed temporarily (Part 4). It references the **Streets, Rights of Way and Access Plans [EN010149/APP/2.4]**. This Schedule relates to Articles 11 (Status of public rights of way constructed or improved), 12 (Construction and maintenance of new and altered streets) and 13 (Temporary prohibition or restriction on use of streets and public rights of way).

5.7. [Schedule 7 \(Access to works\)](#)

- 5.7.1. This Schedule sets out the permanent means of access to works to the Authorised Development. It references the **Streets, Rights of Way and Access Plans [EN010149/APP/2.4]**. The Schedule relates to Article 15 (Access to works).
- 5.8. [Schedule 8 \(Traffic regulation measures\)](#)
- 5.8.1. This Schedule contains details of the streets that are subject to traffic regulation measures, which are temporary speed limits (Part 1), temporary road closures (Part 2), temporary traffic signals (Part 3) and permanent speed limits (Part 4). This Schedule relates to Article 17 (Traffic regulation measures).
- 5.9. [Schedule 9 \(Land in which only new rights etc. may be acquired\)](#)
- 5.9.1. This Schedule sets out the areas of land over which only new rights may be acquired by the undertaker and the nature of the rights that may be acquired. The plot numbers in column 1 of that table correlate with the relevant plot numbers shaded blue on the **Land Plans [EN010149/APP/2.2]** and the nature of the rights in column 2 explains the purposes for which rights over land may be acquired and restrictive covenants imposed. The Schedule relates to Article 24 (Compulsory acquisition of rights).
- 5.10. [Schedule 10 \(Modification of compensation and compulsory purchase enactments for the creation of new rights and imposition of new restrictive covenants\)](#)
- 5.10.1. This Schedule modifies existing compensation legislation including the Land Compensation Act 1973 and the Compulsory Purchase Act 1965. It is commonly included in made DCOs, including the **Cleve Hill Solar Park Order 2020**, the **Gate Burton Energy Park Order 2024** and the **Cottam Solar Project Order 2024**. This has been updated to reflect any necessary changes arising as a result of the Housing and Planning Act 2016. The Schedule relates to Article 24 (Compulsory acquisition of rights).
- 5.11. [Schedule 11 \(Land of which temporary possession may be taken\)](#)
- 5.11.1. This Schedule sets out the land of which only temporary possession may be taken, pursuant to Article 31 (Temporary use of land for constructing the authorised development). This land is shown green on the **Land Plans [EN010149/APP/2.2]**, and the purpose for the temporary possession is described by reference to the relevant powers and work numbers and corresponding **Works Plans [EN010149/APP/2.3]**.
- 5.12. [Schedule 12 \(Hedgerows to be removed\)](#)
- 5.12.1. This Schedule sets out the specific hedgerows to be removed pursuant to Article 40 (Felling or lopping of trees and removal of hedgerows) and lists in Column 2 the number of the hedgerow and extent of the removal. Schedule 12

is divided into Part 1 (Removal of hedgerows) and Part 2 (Removal of important hedgerows).

5.13. Schedule 13 (Documents and plans to be certified)

5.13.1. This Schedule lists the documents that the undertaker must have certified as true copies by the Secretary of State pursuant to Article 42 (Certification of plans and documents, etc.).

5.14. Schedule 14 (Arbitration rules)

5.14.1. This Schedule relates to Article 43 (Arbitration). The intention is to achieve a fair, impartial and binding award on substantive differences between the parties. Timeframes are imposed in relation to the arbitration process, in the context of the pressing need for new power generation, particularly by renewable means, identified in the National Policy Statements, and it is considered desirable that any disputes are resolved promptly to enable delivery of the Authorised Development in as timely a way as possible.

5.14.2. Schedule 14 refers to the person who commenced the arbitration as the Claimant and the other party as the Respondent.

5.15. Schedule 15 (Protective provisions)

5.15.1. This Schedule sets out protective provisions for the benefit of statutory undertakers whose equipment may be affected by the Authorised Development. This schedule relates to Article 44 (Protective provisions) and currently contains protective provisions for the benefit of defined classes of service undertakers (electricity, gas, water and sewerage undertakers at Part 1, electronic communications code operators at Part 2, and drainage authorities at Part 3).

5.15.2. This Schedule will be updated with additional parts with bespoke protective provisions for the benefit of particular bodies in the post-Application and Examination period. Negotiation with the relevant parties for these additional provisions is at various stages.

5.15.3. The protective provisions in Part 1 – for the protection of electricity, gas, water and sewerage undertakers, have been amended slightly to include other mains, pipelines or cables not ordinarily falling within the definition of "apparatus" and the owner of such mains, pipelines and cables as a "utility undertaker". This is to capture and protect the water supply to any tenants that is privately provided within the Order Limits.

5.16. Schedule 16 (Procedure for discharge of requirements)

5.16.1. This Schedule provides a bespoke procedure for dealing with an application made to the relevant planning authority for any consent, agreement or approval required by the Requirements in Schedule 2 of the Order. It sets out time periods within which decisions must be made. Appendix 1 of Advice Note 15

from the Planning Inspectorate **[Ref-1]** provides that this decision period from the discharging authority is 42 days but the Applicant has deemed it appropriate to extend this to ten weeks. Paragraph 2(5) of Schedule 16 provides that the Applicant must also give notice of such application, and provide a copy of the application, to any requirement consultee if it is required, which goes beyond Appendix 1 of Advice Note 15 **[Ref-1]**. The Schedule also provides for deemed approval of the applications in certain circumstances. The Schedule makes provision if the relevant planning authority requires further information to be provided in relation to that application and for appeals to be made in the event of a refusal of an application. Schedules similar to Schedule 16 have been used in various orders and can be seen in a similar form in the **Cleve Hill Solar Park Order 2020**, the **Longfield Solar Farm Order 2023**, the **Hornsea Four Offshore Wind Farm Order 2023** and the **Gate Burton Energy Park Order 2024**. The bespoke process is required in order to ensure that applications under requirements are dealt with efficiently so that the Authorised Development is not held up. Deemed approval of applications is required for the same reason and ensures that the nationally-needed Authorised Development will not be held up by the discharge of requirements. The Schedule relates to Article 46 (Procedure in relation to certain approvals etc.).

6. References

- **Ref. 1:** Planning Inspectorate (2018) Nationally Significant Infrastructure Projects - Advice Note Fifteen: drafting Development Consent Orders. Available online: <https://www.gov.uk/government/publications/nationally-significant-infrastructure-projects-advice-note-fifteen-drafting-development-consent-orders/nationally-significant-infrastructure-projects-advice-note-fifteen-drafting-development-consent-orders#appendix-1>



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